

No. 11957

United States
Circuit Court of Appeals
For the Ninth Circuit.

CALIFORNIA SHIP SERVICE COMPANY and
FIREMAN'S FUND INSURANCE COM-
PANY,

Appellant.

VS.

WARREN H. PILLSBURY, Deputy Commis-
sioner, 13th Compensation District,
Appellee.

Apostles on Appeal

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

AUG 5 - 1948

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

For Appellants:

LASHER B. GALLAGHER

458 S. Spring St.

Los Angeles 13, Calif.

For Appellee:

JAMES M. CARTER,

United States Attorney

CLYDE C. DOWNING,

Assistant U. S. Attorney,

600 U. S. Post Office and Court House
Bldg.

Los Angeles 12, Calif. [1*]

United States of America—ss.

To: Warren H. Pillsbury, Deputy Commissioner, 13th Compensation District, and James M. Carter, United States Attorney, and Clyde C. Downing, Assistant United States Attorney, Proctors, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 23rd day of June, A.D. 1948, pursuant to an order allowing appeal filed on May 14th, 1948, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 7284-M, Central Division, wherein California Ship Service Company, a corporation, and Fireman's Fund Insurance Company, a corporation, are appellants and you are appellee to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Paul J. McCormick, United States District Judge for the Southern District of California, this 14th day of May, A.D. 1948, and of the Independence of the United States, the one hundred and seventy-second.

[Seal] /s/ PAUL J. McCORMICK,
U. S. District Judge for the Southern District of
California.

Service of a copy of the foregoing Citation, copy of Petition for Appeal, Order Allowing Appeal and Assignments of Error, are acknowledged this 14th day of May, 1948.

/s/ JAMES M. CARTER,

U. S. Atty., Proctors for
Appellee.

By /s/ GERTRUDE M. JOHNSON,
Civil Dkt. Clk. [2]

In the District Court of the United States, Southern
District of California, Central Division

No. 7284-M

CALIFORNIA SHIP SERVICE COMPANY, a
Corporation, and FIREMAN'S FUND IN-
SURANCE COMPANY, a Corporation,
Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner, 13th Compensation District,
Respondent.

LIBEL FOR INJUNCTION PURSUANT TO
TITLE 33 USCA, SEC. 921

To: The Honorable District Court of the United
States, Southern District of California, Central
Division:

The Libelants California Ship Service Company,
a corporation, and Fireman's Fund Insurance Com-
pany, a corporation, respectfully show:

Article I.

Libelant California Ship Service Company, at all times herein mentioned, has been and now is a corporation. Libelant Fireman's Fund Insurance Company, at all times herein mentioned, has been and now is a corporation. [3]

Article II.

On the 6th day of December, 1945, one Robert Johnson, Jr., was in the employ of California Ship Service Company, a corporation, as a harbor worker and on said date was working as such harbor worker on navigable waters of the United States at Los Angeles Harbor in the State of California, and on said date the said Robert Johnson, Jr., sustained an injury which caused his death on the same day, to wit, December 6, 1945.

Article III.

Louise Johnson, Sr., was the mother of the said Robert Johnson, Jr., and Robert Johnson, Sr., was the father of said Robert Johnson, Jr. At all times herein mentioned the said mother and father of Robert Johnson, Jr., were and each thereof was and is living. Within the time allowed by law the said Louise Johnson, Sr., filed a claim for a death benefit award.

Article IV.

Libelant Fireman's Fund Insurance Company, a corporation, at all times herein mentioned was the Longshoremen's and Harbor Workers' Compensation Insurance Carrier for said California Ship Service Company, a corporation.

Article V.

On June 5, 1947, the respondent herein made a Compensation Order, awarding a death benefit to the said Louise Johnson, Sr., and certain minor brothers and sisters of the said Robert Johnson, Jr., and a copy of said Compensation Order is as follows: [4]

“Federal Security Agency, Bureau of Employees Compensation, 13th Compensation District. Case No. 2972-176. Claim No. 2516. In the matter of the claim for compensation under the Longshoremen’s and Harbor Workers’ Compensation Act. Mrs. Louise Johnson, Sr., Louise Johnson, Joseph Charles Forest Johnson, Lucille Idel Johnson, Edwin Johnson, Hilda Mae Johnson, Harold Johnson, Walter Johnson, Romalis Johnson, Mother, Brothers, Sisters and Nephew of Robert Johnson, Jr., deceased, Claimants, against California Ship Service Company, Employer. Fireman’s Fund Insurance Company, Insurance Carrier.

“Compensation Order—Award of Compensation

“Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

“Findings of Fact

“That on the 6th day of December, 1945, Robert Johnson, Jr., was in the employ of the employer above named at Los Angeles Harbor, in the State

of California in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Fireman's Fund Insurance Company; that on said day the said employee while performing service for the employer as a laborer and engaged at ship repair operations on a completed vessel on navigable waters of the [5] United States at said Harbor, sustained personal injury occurring in the course of and arising out of his employment and resulting in death the same day as follows: He fell from a ladder while descending into a tank of the ship, sustaining fatal injury; that the employer furnished the employee with medical treatment, etc., in accordance with Section 7(a) of the said act; that the average weekly earnings of the employee at the time of his injury exceeded \$37.50; that the employee left surviving him and dependent (sic) in fact upon him for support his mother, Louise Johnson, Sr., born December 28th, 1905, and adult sister, Louise Johnson, born December 11, 1922, a child of said Louise Johnson named Joseph Charles Forest Johnson born October 19, 1945, and the following minor brothers and sisters: Lucille Idel Johnson, born February 29, 1929, Edwin Johnson, born July 22, 1930; Hilda Mae Johnson, born March 30, 1932; Harold Johnson, born April 4, 1934; Walter Johnson, born June 22, 1936, and Romalis Johnson, born November 20, 1940; that claimants Louise Johnson, Sr., Lucille Idel Johnson, Edwin

Johnson, Hilda Mae Johnson, Harold Johnson, Walter Johnson and Romalis Johnson are entitled to a death benefit at the rate of 25 per cent of the average weekly wages of the employee for Louise Johnson, Sr., his mother, and 15 per cent of said weekly wages for each of the said minor brothers and sisters, the share of each minor child to run until such child reached or will reach the age of 18 years, provided, however, that the total allowance to all dependents may not exceed $66\frac{2}{3}$ per cent of the said average weekly wages or \$25.00 a week. That such death benefit at the rate of \$25.00 a week shall be paid to Louise Johnson, Sr., for the support and maintenance of herself and said minor children, commencing with the date of the death of the said Robert Johnson, Jr.; Amount accrued to and including the date of the hearing July 2, 1946, $29\frac{5}{7}$ weeks is \$742.85, no part of which has been paid; that Louise Johnson, a sister born December 11, 1922, was wholly dependent upon the deceased employee at the time of his death for her support but was [6] over the age of 18 years and has not been shown to have been physically or mentally incapacitated from earning her living, and is not entitled to share in said death benefit; that a child of said Louise Johnson, Joseph Charles Forest Johnson, was born October 19, 1945, was a nephew of the deceased employee and wholly dependent upon him for support at the time of his death, but is not within the relationship to the employee within which valid claim may be made for death benefit; that the reasonable expense of

burial of the employee was over \$200.00 and that \$511.75 is owing thereon by claimant to W. D. Fisher & Son, Inc., Undertakers, 4700 Avalon Blvd., Los Angeles; that claimants are entitled to an allowance of \$200.00 upon said burial expense to be paid direct to said undertaker; that J. Warren Woodville, claimant's attorney, 821 Maison Blanche Building, New Orleans 16, La., has rendered legal service to claimants in the above matter in the present claim for which a fee is approved in the sum of \$65.00 and lien granted thereon on compensation herein awarded.

Upon the foregoing facts, the Deputy Commissioner makes the following:

“Award.

“That the employer, California Ship Service Company, and the insurance carrier, Fireman's Fund Insurance Company, shall pay to the claimants compensation as follows: To claimants Louise Johnson Sr., Lucille Ideal Johnson, Edwin Johnson, Hilda Mae Johnson, Harold Johnson, Walter Johnson, and Romalis Johnson, payable to Louise Johnson, Sr., the sum of \$200.00 upon the burial expense, to be paid to W. D. Fisher & Son, Inc., Funeral Director, upon the liability of said claimants therefor.

“To claimant Louise Johnson, Sr., for the benefit of herself and said minor children, the sum of \$742.85 forthwith as of July 2nd, 1946, less, however, the sum of \$65.00 to be deducted therefrom and [7] paid to claimants' attorney J. L. Woodville upon his lien for attorney's fees.

“To said claimant Louise Johnson, Sr., for the benefit of herself and said minor children the sum of \$25.00 a week payable in installments each two weeks beginning with July 3, 1946, until further order of the Deputy Commissioner.

“The claims of Louise Johnson, sister of deceased, and her child, Joseph Charles Forest Johnson, are rejected upon the ground that the said Louise Johnson was over 18 years of age at the time of her brother's death and has not been shown to have been physically or mentally disqualified from earning, and that her child is not within the class of relatives to whom death benefits may be awarded.

“Given under my hand at San Francisco, California, this 5th day of June, 1947.

/s/ WARREN H. PILLSBURY,
Deputy Commissioner, 13th
Compensation District.

WHP:nm”

Article VI.

There were two hearings and only two hearings relating to the said application and said hearings were conducted in the City of New Orleans, State of Louisiana, before Joseph H. Henderson, Deputy Commissioner, and a full and complete copy of the record of said hearings is attached hereto as Exhibit “A” and by reference thereto made a part hereof with the same effect as though set out verbatim herein.

Article VII.

There were no stipulations of any kind or character made by the libelants, or either of them, excepting as set forth in the [8] transcript of the proceedings which is attached hereto as Exhibit "A."

Article VIII.

The award is not in accordance with law for the following reasons:

1. There is no evidence to support the finding that the average weekly earnings of Robert Johnson, Jr., at the time of his injury exceeded \$37.50, and said finding is directly contrary to the stipulation of the parties that the average weekly wage of the decedent at the time of his injury amounted to the sum of \$29.62. (Exhibit "A," pg., lines).

2. There is no evidence to show that there was no surviving wife or child of Robert Johnson, Jr.

3. There is no evidence showing that Louise Johnson, Sr., was dependent upon the deceased Robert Johnson, Jr., at the time of the injury which caused the death of said Robert Johnson, Jr.

4. There is no evidence showing that the minor brothers or sisters were or any thereof was dependent upon the deceased Robert Johnson, Jr., at the time of the injury which caused the death of the said Robert Johnson, Jr.

5. No claim for a death benefit was at any time filed by any person excepting Louise John-

son, Sr., and the deputy commissioner had no power or jurisdiction to make or order any award in favor of any minor brother or sister of Robert Johnson, Jr.

6. The award does not provide that payments are to be continued only during any dependency of Louise Johnson, Sr.

7. The award does not provide that payments are to be continued only during any dependency of the minor brothers and sisters of [9] Robert Johnson, Jr.

8. There are no findings as to why or how Louise Johnson, Sr., was a dependent of Robert Johnson, Jr.

9. There are no findings with reference to whether or not Louise Johnson, Sr., was dependent upon Robert Johnson, Jr., at the time of the injury which caused the death of said Robert Johnson, Jr.

10. There are no findings with references to whether or not the minor brothers and sisters of the deceased were dependent upon the deceased at the time of the injury which caused the death of said Robert Johnson, Jr.

11. The award does not provide that payments are to be continued only during dependency.

12. There is no finding that Robert Johnson, Jr., left no surviving wife or child.

13. There is no substantial evidence to support the findings and award, or either thereof.

Wherefore, libelants pray that the said Compensation Order be set aside and that enforcement thereof be enjoined.

LASHER B. GALLAGHER,
JOHN H. BLACK and
EDWARD R. KAY,

By /s/ LASHER B. GALLAGHER,
Proctors for Libelants. [10]

EXHIBIT "A"

United States Employees' Compensation
Commission

Joseph H. Henderson, Deputy Commissioner
7th Compensation District, New Orleans, La.

Case No. 2972-176

MRS. LOUISE JOHNSON,

Claimant.

against

CALIFORNIA SHIP SERVICE COMPANY,
Employer.

FIREMAN'S FUND INSURANCE COMPANY,
Insurance Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice, this matter was heard before the Honorable Joseph H. Henderson, Deputy Commissioner, United States Employees' Compensation Commission, at New Orleans, Louisiana, at

Room 600, Maritime Building, 203 Carondelet St., on the 4th day of June, 1946.

Appearances: Frank S. Norman, Hibernia Building, New Orleans, La., Attorney for Employer and Insurance Carrier. Claimant not represented by Counsel. [11]

TRANSCRIPT OF TESTIMONY

Deputy Commissioner Henderson: Gentlemen, shall we get started, please? The court reporter will show the hearing started at ten o'clock this date.

The hearing at this time is in respect to a claim for compensation (death benefits) filed by Mrs. Louise Johnson, mother of Robert Johnson, Jr., deceased, and against California Ship Service Company, employer of the said Robert Johnson, Jr., and Fireman's Fund Insurance Company, insurance carrier of said employer, under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended.

This case was transferred to me by the Deputy Commissioner of the 13th Compensation District, at San Francisco, California, with the approval of the United States Employees' Compensation Commission.

On December 18, 1945, the employer reported that Robert Johnson, Jr., one of its employees, was injured December 6, 1945, while working as a laborer on the S/S "California," at Berth 216, Terminal Island, California; that he was descending

a ladder into a tank, lost his balance and fell to the deck of tank, resulting in his death.

On February 11, 1946, a claim for compensation (death benefits) was filed by Mrs. Louise Johnson, of this city, with the Deputy Commissioner at San Francisco.

On February 13, 1946, a copy of said claim was sent to the employer and insurance carrier, by registered mail, for their answer, and on February 20, 1946, answer was filed by Attorney Murray H. Roberts, making a general denial of liability, but on March 22, 1946, on behalf of the insurance carrier, he executed a stipulation admitting and denying certain facts.

At this point I will ask the interested parties if they [12] will stipulate for the record the facts which they are willing to accept and admit without controversy.

Mrs. Louise Johnson, the claimant in this present hearing, is of course present, and I would like to ask her if she is represented by an attorney at this hearing this morning.

The Claimant: No, sir.

Deputy Commissioner Henderson: Are you willing, Mrs. Johnson, to proceed with the hearing this morning without an attorney?

The Claimant: Yes, sir.

(A recess was taken at 10:10 a.m. to discuss the facts with the claimant. The hearing was resumed at 11 a.m.)

Deputy Commissioner Henderson: There are certain facts in this case which may be admitted

by both sides. However, one of the points to be decided is with reference to the average weekly wage of the decedent at the time of his injury.

I have clearly, plainly and in detail explained to Mrs. Louise Johnson and her husband, who is also present with her this morning, why the average weekly wage of the decedent becomes a necessary question in determining what compensation Mrs. Louise Johnson would be entitled to if she is entitled to any compensation at all.

I have shown her statements purportedly having been obtained from the employers for whom the decedent worked in maritime employment in California, and have shown Mrs. Louise Johnson how much the average wage would be, based on those earnings. Mrs. Johnson doesn't fully understand what she would be entitled to under the law, and does not understand how the average weekly wage is computed or is determined.

I explained to her that the most she could get under the [13] law, if she is entitled to anything at all, is \$9.37½ per week, which would be 25% of the maximum average weekly wage of \$37.50 permitted under the law.

Mrs. Johnson and her husband do not understand why she should not get more in compensation than \$9.37½ per week, or a lesser amount if the average weekly wage should be less than \$37.50.

They also have stated that the funeral expenses were so great, that the amount that could be paid under the law on funeral expenses by the employer and insurance carrier being only \$200.00, leaves a

considerable balance on the funeral expenses to be paid by someone, and it is their thought that it would take them so long to pay the remainder of the funeral expense bills, that it would be a long time before Mrs. Johnson could actually receive anything from any compensation that might be paid to her.

Mrs. Johnson has requested that she be allowed additional time in which to give these matters further consideration. She has stated that she would like to consult with someone to advise her with reference to the matter. Is that what you wish to do, Mrs. Johnson?

The Claimant: Yes.

Deputy Commissioner Henderson: Under the circumstances, I think it would be advisable for Mrs. Henderson to consult someone and find out to her own satisfaction just what the facts might be and just what compensation she might be entitled to, if she would be entitled to anything at all.

For that reason I will, while I hate to grant a continuance of the case for that reason alone, I will grant a continuance of this hearing for thirty days, during which time Mrs. Johnson, please listen carefully, during these thirty days I will allow for a continuance of this hearing, you will consult with anybody you wish, and if you wish to bring anybody to my office to [14] find out what is in the record of your case or ask me any questions, that I can answer for them, you are privileged to do so, but when the hearing of your case comes up next

time, you are to be ready to go through with your part of the hearing. Is that clear?

The Claimant: Yes.

Deputy Commissioner Henderson: I will therefore grant a continuance of this hearing for thirty days, and the case will come up again for hearing before me in this same room, on July 2, 1946, beginning at ten o'clock on the morning of that date, at room 600 Maritime Building, 203 Carondelet Street, New Orleans, Louisiana, without further notice to any of the interested parties.

Mrs. Johnson, do you understand now that your case here this morning, is being continued at your request, for four weeks, during which time it is requested that you make such inquiries as you want to make, see anybody you want to see, but you must be ready to go through with your part of the hearing in your case on July 2, 1946?

The Claimant: Yes, sir.

Deputy Commissioner Henderson: Now don't forget it. I will not send you any further notice to be here on July 2. You must be here at that time, at ten o'clock on the morning of Tuesday, July 2, 1946. Do you understand now, Mrs. Johnson; is that clear to you?

The Claimant: Yes, sir.

Deputy Commissioner Henderson: With that understanding, the hearing is continued until July 2, 1946. The court reporter will show the hearing recessed at 11:15 a.m.

(The hearing thereupon recessed at 11:15 a.m., to reconvene at ten o'clock a.m. on July 2, 1946. [15])

Pursuant to notice, this matter was called for further hearing at ten o'clock a.m. on July 16th, 1946, in room 600 Maritime Building, New Orleans, before Hon. Joseph H. Henderson, Deputy Commissioner.

Appearances: Frank S. Normann, Hibernia Building, New Orleans 12, La., Attorney for Employer and Insurance Carrier. Warren Woodville, 821 Maison Blanche Bldg., New Orleans 12, La., Attorney for Claimant.

TRANSCRIPT OF TESTIMONY

Deputy Commissioner Henderson: Gentlemen, shall we get started please? The court reporter will show the hearing commenced at 10 o'clock.

The hearing at this time is a continuation of a hearing started on June 4, 1946, and further continued at request of counsel for defendants July 2, 1946, to this date, in the case of Mrs. Louise Johnson, Claimant, against California Ship Service Company, Employer, and Fireman's Fund Insurance Company, Insurance Carrier of said Employer, in respect to claim for compensation (death benefits) filed by said Claimant on account of the death of her son, Robert Johnson, Jr., under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended.

I notice that Mrs. Louise Johnson is present here

now, and I would like to ask her for the record, if she is represented by an attorney at this hearing?

The Claimant: Yes, sir.

Deputy Commissioner Henderson: And that attorney is Attorney Warren Woodville?

The Claimant: Yes. [16]

Deputy Commissioner Henderson: At this point it will be in order for the interested parties to stipulate for the record the facts that they are willing to admit and accept without controversy.

Mr. Normann: Counsel for the Employer and Insurance Carrier admits and accepts without controversy, the following statement of facts:

1. That on the 6th day of December, 1945, Robert Johnson, Jr., hereinafter called the decedent, was in the employ of California Ship Service Company, at Terminal Island, in the State of California, in the Thirteenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act, was insured by Fireman's Fund Insurance Company; that on said day the decedent herein, while performing service for the employer upon the navigable waters of the United States, sustained accidental injury arising out of and in the course of his employment, and resulting in his disability while he was employed as a laborer on the S/S "California," said vessel being then afloat in the waters of the Pacific Ocean, at Berth 216, at Terminal Island, in the State of California, when, while engaged in ship repair operations on said vessel.

he was descending a ladder into a tank and lost his balance and fell to deck of tank and sustained injuries which resulted in his death on December 6, 1945;

2. That written notice of said injury and death was not given within 30 days, but that the employer had immediate knowledge of said injury and death, and that the employer has not been prejudiced by such failure to give such written notice;

3. That the employer furnished the decedent with medical treatment, etc., in accordance with Section 7 (a) of the said Act; [17]

4. That the average weekly wage of the decedent herein, at the time of his injury, amounted to the sum of \$29.62 per week; that full wages were paid for the day of injury and death;

5. That the total amount of the funeral expenses for preparation and burial of the body of the decedent, which was handled by W. D. Fisher & Son, Inc., Undertakers, 4700 Avalon Blvd., Los Angeles, California, amounted to the sum of \$511.75, of which amount nothing has been paid to the said undertaker by anyone, and another bill amounting to \$192.88 for services rendered by Dennis Mortuary Service, 1940 Eagle Street, New Orleans, which bill has been paid in full by Mrs. Robert Johnson, Sr., the claimant in this case;

6. That the employer and insurance carrier herein have paid nothing as compensation (death benefits) to the claimant herein, and nothing on the burial expenses.

Deputy Commissioner Henderson: Attorney

Woodville, you have heard the facts which counsel for the employer and insurance carrier has stipulated he is willing to accept and admit without controversy. Do you accept those same facts without controversy on behalf of the claimant in this case?

Mr. Woodville: Yes.

Deputy Commissioner Henderson: At this point I will ask Counsel for Defendants to state the issue or issues upon which he desires to be heard.

Mr. Normann: Only on the question of dependency, *vel non*.

Deputy Commissioner Henderson: I will ask Counsel for Claimant to state the issue or issues upon which he desires to be heard.

Mr. Woodville: On the question only of dependency.

Mr. Normann: It is understood, Mr. Henderson, I reserve in behalf of the California Ship Service Company and insurance carrier, any defenses which they may have and wish to urge before [18] Commissioner Pillsbury, and we are not waiving any of those defenses by appearing herein, which is for the convenience of the claimant who is residing in the City of New Orleans, State of Louisiana.

Deputy Commissioner Henderson: Mr. Woodville, it will be in order for you to call your first witness.

Mr. Woodville: Mrs. Louise Johnson, Sr.

Mrs. Louise Johnson, Sr., the claimant, being first duly sworn by the Deputy Commissioner to tell the truth, the whole truth and nothing but the truth, testified as follows, on

Direct Examination

By Deputy Commissioner Henderson:

Q. For the record, will you state your full name?

A. Mrs. Louise Johnson.

Q. Mrs. Louise Johnson, Sr.?

A. Yes, sir.

Q. And where do you live now?

A. 8821 Cohn Street.

Q. That is here in New Orleans?

A. Yes, sir.

Q. How old are you, Mrs. Johnson?

A. 42.

Q. What is the date of your birth?

A. December 28th.

Q. What year? A. 1905.

Q. That would make you 41?

A. This coming December.

Q. So your correct age is 41 as of now, and you will be 42 this coming December?

A. Yes. [19]

Deputy Commissioner Henderson: Proceed, Mr. Woodville.

Q. (By Mr. Woodville): Are you married?

Mr. Normann: We object to that. We think the best evidence of that would be the marriage certificate itself.

Q. (By Deputy Commissioner Henderson): Are you the mother of Robert Johnson, Jr., the dead man in this case? A. Yes.

Q. Who is the mother of Robert Johnson, Jr.?

A. I am.

Mr. Normann: Now, Mr. Commissioner, I want

to state that these questions are subject to my objection without necessity of repetition.

Q. (By Deputy Commissioner Henderson): Who is the father of Robert Johnson, Jr.?

A. Him, Robert Johnson, Sr.

Q. Were you and Robert Johnson, Sr., married?

A. Sure.

Q. I say Senior as distinguished from Robert Johnson, Jr., the dead man. Were you and Robert Johnson, Sr., married? A. Yes.

Q. You remember the date?

A. December 23, 1919.

Q. Where were you married?

A. At the City Hall.

Q. Here in New Orleans? A. Yes, sir.

Q. Have you and your husband lived together ever since? A. Yes.

Q. Has there been a divorce or anything? [20]

A. No, sir.

Q. You and your husband live together?

A. Yes.

Q. Now? A. Yes.

Q. (By Mr. Woodville): When was the boy born?

A. May 22, 1924, or—he is 22 now. He would be 22 May gone.

Q. That would be 1924? A. Yes.

Q. (By Deputy Commissioner Henderson): When was he born? A. May 13.

Q. 1924?

A. May 27th. wasn't it? Look at that record.

Q. You say Robert Jr. was born what date?

A. May 27.

Q. 1924? A. 1924.

Q. (By Mr. Woodville): Was he born of that marriage of you and Robert Johnson, Senior?

A. Yes.

Q. Robert Johnson, Sr., was his father?

A. That's right.

Mr. Woodville: We offer, produce and file in evidence the marriage certificate of Robert Johnson, Sr., and Louise Washington, and the birth certificate of Robert Johnson, Jr. I will get those from the Board of Health.

The Claimant: I have all of that already. [21]

Mr. Woodville: You bring them with you?

The Claimant: No, sir.

Mr. Woodville: I will submit them to you, Mr. Normann.

Deputy Commissioner Henderson: You don't have those now, Mr. Woodville?

Mr. Woodville: No, sir. I thought we were coming today to prove nothing but dependency. I thought those things were already in the record, having come into the case late.

Deputy Commissioner Henderson: Do you have any objection to those being received in evidence, Mr. Normann?

Mr. Normann: No, sir, not if he can produce them, but subject to my objection.

Deputy Commissioner Henderson: When can you have those, Mr. Woodville?

Mr. Woodville: This afternoon. She can go home

and get them. I thought I would have to get them, but she says she has them. I will file those during the course of the day.

Deputy Commissioner Henderson: Attorney for Defendants objects to receiving those certificates in evidence without opportunity to see them and examine them. When they are produced their admissibility will be ruled on at that time, subject to objection of defendants. We will proceed with examination of the witness, Mr. Woodville.

Q. (By Mr. Woodville): Did your boy Robert Johnson, Jr., contribute to your support; anything?

A. Yes, he did.

Q. Did you require the amount he sent you to live on; could you get on without it if he didn't send it to you? [22]

Mr. Normann: That is leading, and I object. She is represented by counsel, so don't tell her.

Mr. Woodville: I put that in legal form.

Mr. Normann: That is objected to, Mr. Woodville. You are testifying instead of asking her a question.

Q. (By Mr. Woodville): How much did your boy send you on an average?

A. When he first went out there, he sent me \$30; then he started sending me \$15 a week and after my girl got pregnant out there, I didn't get any more.

Q. (By Deputy Commissioner Henderson): With reference to contributions by the decedent, we shall consider only one year prior to the decedent's death, coming back or going back one year

Q. You say Robert Jr. was born what date?

A. May 27.

Q. 1924? A. 1924.

Q. (By Mr. Woodville): Was he born of that marriage of you and Robert Johnson, Senior?

A. Yes.

Q. Robert Johnson, Sr., was his father?

A. That's right.

Mr. Woodville: We offer, produce and file in evidence the marriage certificate of Robert Johnson, Sr., and Louise Washington, and the birth certificate of Robert Johnson, Jr. I will get those from the Board of Health.

The Claimant: I have all of that already. [21]

Mr. Woodville: You bring them with you?

The Claimant: No, sir.

Mr. Woodville: I will submit them to you, Mr. Normann.

Deputy Commissioner Henderson: You don't have those now, Mr. Woodville?

Mr. Woodville: No, sir. I thought we were coming today to prove nothing but dependency. I thought those things were already in the record, having come into the case late.

Deputy Commissioner Henderson: Do you have any objection to those being received in evidence, Mr. Normann?

Mr. Normann: No, sir, not if he can produce them, but subject to my objection.

Deputy Commissioner Henderson: When can you have those, Mr. Woodville?

Mr. Woodville: This afternoon. She can go home

and get them. I thought I would have to get them, but she says she has them. I will file those during the course of the day.

Deputy Commissioner Henderson: Attorney for Defendants objects to receiving those certificates in evidence without opportunity to see them and examine them. When they are produced their admissibility will be ruled on at that time, subject to objection of defendants. We will proceed with examination of the witness, Mr. Woodville.

Q. (By Mr. Woodville): Did your boy Robert Johnson, Jr., contribute to your support; anything?

A. Yes, he did.

Q. Did you require the amount he sent you to live on; could you get on without it if he didn't send it to you? [22]

Mr. Normann: That is leading, and I object. She is represented by counsel, so don't tell her.

Mr. Woodville: I put that in legal form.

Mr. Normann: That is objected to, Mr. Woodville. You are testifying instead of asking her a question.

Q. (By Mr. Woodville): How much did your boy send you on an average?

A. When he first went out there, he sent me \$30; then he started sending me \$15 a week and after my girl got pregnant out there, I didn't get any more.

Q. (By Deputy Commissioner Henderson): With reference to contributions by the decedent, we shall consider only one year prior to the decedent's death, coming back or going back one year

to see what contributions might have been made, would seem a sufficiently long period to determine if there was any real dependency or not, so the period back to December 6, 1944, would be sufficient. Now this witness stated when he first went to California, he sent her \$30. Now when did he go to California? A. I just can't remember.

Q. You remember about when it was?

A. No, sir; I don't remember. I am too upset.

Q. You don't have to go into all that explanation. Just answer yes or no. Don't you know about when it was that he went to California?

A. No, I don't.

Q. (By Mr. Woodville): He was working other places in California before he went to the shipyard? [23]

Q. (By Deputy Commissioner Henderson): Where did he go in California?

A. Washington; Bremerton, Washington.

Q. You don't know when he went to California?

A. No, I don't.

Q. You know when he sent you the \$30?

A. He sent me the money when he was in California.

Q. About what year or month was that?

A. He sent me money then all last year.

Q. About what month of the year did he send you the \$30? A. The \$30?

Q. The \$30 which you said was the first money he sent you? A. In 1944 and in 1945.

Q. That may be true, but that doesn't answer the question. A. I don't know.

Q. Well, you will have to think.

A. I know the last time he sent me two \$10 bills in November to buy me some Venetian blinds.

Q. (By Mr. Woodville): What year?

A. 1945.

Q. In November 1945 he sent you two ten dollar bills—in November? A. Yes.

Q. What was the last time before that, he sent you any money?

A. I just can't remember. You see my daughter * * *

Q. When was the last time before November, before you got these two ten dollar bills in November, how long had it been that you had received anything further from him?

A. I think August or July—one of those months.

Q. Either July or August? A. Yes.

Q. How much did he send you in July or August? A. \$15.

Q. That was in either August or July 1945?

A. Yes.

Q. Now did he send you any money in June?

A. Yes, he sent me in June.

Q. How much money did he send you in June?

A. I think 15 then too.

Q. He sent you \$15 in the month of June?

A. Yes.

Q. Was that all he sent you in the month of June, \$15 for the whole month?

A. I think he sent me money twice in June.

Q. How much did he send each time, \$15 each time?

Deputy Commissioner Henderson: Let her answer that question.

A. Each time.

Q. (By Deputy Commissioner Henderson): You mean to tell us he sent you \$30 in June, 1945?

A. I didn't say.

Q. You told him (Mr. Woodville) that.

A. I said \$15.

Q. (By Mr. Woodville): I just want the truth. Is that all he sent you in June, that \$15? Now think well. Try to remember and if you can't remember, say so.

A. I can't remember, because I am wool-gathered.

Q. All he sent you was \$15 in June?

A. Yes. [25]

Q. (By Deputy Commissioner Henderson): When did he send you money before June?

A. Let me explain this to you. My daughter went up there and got pregnant and he was taking care of her then.

Q. (By Mr. Woodville): We are talking about when your daughter went there. When did she go to California?

A. December, 1944, and she got pregnant and he stopped sending money to me. I told him to take care of her; he was running with her all of the time.

Q. You get any money in May?

A. Yes. The baby was born in October.

Q. How much did you get in May, 1945?

A. I just can't remember.

Q. Did you get those payments by Western Union?

A. Yes, and I went down there to get a record of it and they told me to get the date.

Q. (By Deputy Commissioner Henderson): You don't know how much, if any, he sent you in May, 1945? A. No, I don't know.

Q. (By Mr. Woodville): Did you get anything from him in April, 1945?

A. I think I did. That was Easter. He sent me money to get clothes for the children.

Q. (By Deputy Commissioner Henderson): How much. A. That was \$30.

Q. That was April, 1945? A. Yes.

Q. (By Mr. Woodville): Now between the first of January, 1945, and this \$30, [26] he sent you for Easter, did he send you any money in between that time, from January to Easter?

A. Yes. First part of the month regular I got it then, but after my daughter got pregnant, he had to pay for her.

Q. Now in March, how much did he send you—do you remember, March, 1945? Do you know how much he sent you. We have gotten now from November to Easter, 1945. Now before Easter, 1945, what was the time before that, that you received any money from him? How many weeks or months or days was it before you received that \$30? How long before you had gotten anything from him?

A. I used to get \$15 from him right along, twice a month; sometimes three times.

Q. You mean those previous months?

A. You said in——

Q. I made the question very plain. You said you got \$30. A. For Easter.

Q. Now when was the last time before you got that \$30 that you got any money from him; how long before that?

A. I got money in March, to; I think \$15; and in March I got some money too.

Q. (By Deputy Commissioner Henderson): How much did you get then?

A. I was getting \$15.

Q. (By Mr. Woodville): For the whole month?

A. I got it twice.

Q. (By Deputy Commissioner Henderson): You mean you got \$30 in March, 1945?

A. Yes.

Q. Is that what you mean? I remind you that you are under oath to tell the truth; so think carefully.

A. Two \$15 money orders. If I could get that record from [27] the Western Union——

Q. I know, but you don't have it. You mean to tell us now you got \$15 on two different times in March, from the deceased? A. Yes.

Q. (By Mr. Woodville): In February, the month before that, how much did you receive—that is two months before the Easter month. You remember how much you received in February, 1945? Was he sending you money regularly at that time? A. No, not regular.

Q. At that time he was not sending you money regular? A. No.

Q. (By Deputy Commissioner Henderson): Do you think you got any money in February, 1945, from the deceased, or do you think you did not get any that month? A. I don't remember.

Q. You don't know if you did or did not?

A. No.

Q. How about January, 1945, that is the first month of that year. You recall if you got any money from the deceased in January, 1945?

A. No.

Q. So you don't know if you got any money from the deceased in January, 1945, or not? Is that right? A. That is right.

Q. (By Mr. Woodville): Now in December, 1944, how much money did you get from him? That was Christmas time.

A. I don't know. That has been a long time. I can't remember that.

Q. You have to try to remember something. You have no records so you will have to use your memory as best you can as to [28] what you received from him.

A. (The witness fails to answer.)

Q. (By Deputy Commissioner Henderson): You don't know if he sent you any money in December, 1944, or not?

A. I am not to myself right now.

Q. Then you don't know right now if he sent you any money in December, 1944, or not?

A. That's right. You see, with a sudden death like that, it gets me all upset.

Q. (By Mr. Woodville): What did you do with this money he sent you?

A. I took care of my children with it.

Q. How many children have you?

Mr. Normann: We object, for there is no claim here for any children.

Mr. Woodville: If it please the court, the number of children she had in her family would affect the capacity of what money her husband gave toward her support, and the same people she would have to support herself, would add to the amount of her dependence on the decedent.

Q. (By Deputy Commissioner Henderson): How many children did you have then?

A. Six.

Q. Were those six children you spoke of—was that money from the decedent spent on them?

A. Yes.

Q. You use the money to support these children?

A. Yes.

Q. In what way did you use it? What did you spend it for?

A. Buy clothes and food and send them to school. I [29] graduated one girl on the money he sent me.

Q. You use all of the money you told us about that the deceased sent you, for that purpose?

A. Yes.

Q. Is that right?

A. Yes.

Cross-Examination

By Mr. Normann:

Q. Now, Louise, you have a daughter by the name of Louise in California? A. Yes.

Q. That is your oldest daughter, is that right?

A. Yes.

Q. That is the daughter who became pregnant?

A. Yes.

Q. When did that daughter become pregnant?

A. I don't know when she got pregnant, but I know the baby was born October 19th.

Q. What year? A. 1945.

Q. Now you don't know what day she became pregnant? A. No.

Q. You testified in answer to Mr. Woodville, that she became pregnant on December 3, 1944?

A. No. I told him she left for California December 3.

Q. You didn't say she became pregnant on December 3, 1944?

A. No, I said she went to Los Angeles on December 3.

Q. I believe you also told Mr. Woodville that from the time your daughter became pregnant, until the time the baby was born, you did not receive any money from your son. Is that correct?

A. Yes.

Q. During that time, what was he doing with his money; you know?

A. Taking care of our daughter.

Q. Is she married? A. No, sir.

Q. Her child was not a legal child?

A. No, sir.

Q. Your son and your daughter were living together at the time he was killed?

A. Yes, sir.

Q. (By Deputy Commissioner Henderson): When was this baby born? A. October 19.

Q. What year. A. 1945.

Q. (By Mr. Normann): You know whether or not your daughter went to work after her baby was born? A. No.

Q. She did not? A. No, sir.

Q. Is it not a fact that your son supported your daughter after the baby was born?

A. He supported her before when she was pregnant.

Q. After the baby was born, October 19, 1945, he continued to support your daughter and her little baby? A. Yes.

Q. Is that right? A. Yes.

Q. (By Deputy Commissioner Henderson): What is your daughter's name? [31]

A. Louise Evelyn Johnson.

Q. (By Mr. Normann): How long did that little baby stay with your daughter?

A. He stayed with her a month and two weeks, when I brought the baby back.

Q. After your son was killed? A. Yes.

Q. Up until the time that you brought the baby back, your son was supporting your daughter and the baby. Is that correct? A. Yes.

Q. And also all during the time that your daugh-

ter was pregnant, your son supported your daughter?

A. No, not all of the time. This fellow she was living with, left her after she was four or five months' pregnant; that's when he left her.

Q. Now you testified both to Mr. Woodville, and you testified in answer to my question, that during the time that your daughter was pregnant, your son had taken care of her?

A. Not the whole while. She had a common law husband and he left her, because how I know as much as I do, because some girls come back from there and told me how dirty he did.

Q. How long had your daughter been living with this common law husband?

A. Since she went up there.

Q. (By Deputy Commissioner Henderson):
December 3, 1944? A. Yes.

Q. Your daughter go from here to California?

A. Yes.

Q. And she got to California December 3, 1944?

A. She left on the third.

Q. Left New Orleans on December 3, 1944, and went to Los [32] Angeles? A. Yes.

Q. (By Mr. Normann): You know when she took up to live with this common law husband?

A. No.

Q. Was the common law husband living in the same house with your son and daughter?

A. They had a room to themselves at first.

Q. In the same house?

A. It is a hotel; but after he left, she moved with him.

Q. And the common law husband left your daughter about five months before the baby was born? A. Yes.

Q. Now from the time Louise, that your daughter's common law husband left her, up until the time your son was killed, he was taking care of your daughter and her baby? A. Yes.

Q. Your daughter had no other means of support? A. Yes.

Q. That right? A. Yes.

Q. Now during that period of time, your son did not send you any money at all; is that right?

A. Yes.

Q. Is that what you mean to tell the court?

A. That's right.

Q. And you brought the baby back?

A. Yes.

Q. After the funeral service out there?

A. Yes, sir.

Q. Now, Louise, is it not a fact—now listen well to what I [33] am asking you. We just want to know the truth. Is it not a fact that from the time that your daughter arrived in California, which was in the early part of December, 1944, that your son supported your daughter all during that time?

A. No.

Q. That is not a fact? A. No.

Q. You mean by that, then, that he did not pay for the groceries during that time; did not pay the rent and did not pay her expenses? Is that what

you are telling the Court? Now think well, Louise; I am going to put you on your guard and show you a statement and ask you to think well if that is not the truth, that all during that time your son supported your daughter by buying her groceries, paying her rent and all her expenses? Isn't that true?

A. Well, I will have to explain that to you.

Deputy Commissioner Henderson: You can say if that is true or not true, and then give an explanation.

Q. (By Mr. Woodville): Do you know; were you there?

A. No, I was not there. She left here to go to him.

Q. (By Deputy Commissioner Henderson): To your son? A. Yes.

Q. (By Mr. Normann): And she lived with the dead boy? A. Yes.

Q. (By Deputy Commissioner Henderson): You mean she lived with your son, who is the dead boy in this case, up to where she took up with this common law husband?

A. Yes, but I don't know when she took up with him, and I didn't know she was pregnant until the boy left her. When I got the news the boy had left, and he told me he would have to take care [34] of her, because the fellow went to Frisco.

Q. And while this common law husband of your daughter lived with her, he supported your daughter? A. Yes.

Q. While he was with her? A. Yes.

Q. As her common law husband and living with her?
A. Yes.

Q. But when he left her, the dead boy had to support her or did support her?
A. Yes.

Q. Is that what you mean?
A. Yes.

Q. And the dead boy, the decedent in this case, if I understand you correctly, did continue to support your daughter while she was still pregnant, until the baby was born?
A. Yes.

Q. And which was on October 19, 1945, as you said?
A. Yes.

Q. Now during the time that the dead boy supported your daughter, after her common law husband left her, the dead boy did not send you any money because he was using it for his own support and the support of your daughter?

A. That's right; that's right.

Mr. Normann: And she also said up until after the baby was born, up until his death, he was supporting her daughter and baby.

The Witness: Yes.

Q. (By Deputy Commissioner Henderson): The baby was born to your daughter October 19th, 1945, and your son was killed December 6, 1945?

A. Yes. [35]

Q. From October 19, 1945, when the baby was born, to the day the dead boy was killed, he supported the daughter and baby?
A. Yes.

Q. And during that time, namely, October 19, 1945, to the time of his death, the dead boy did not send you any money during that time because he

was using his money for his own support and to support your daughter and her baby?

A. That's right.

Q. (By Mr. Normann): Now, Louise, when your daughter left New Orleans on December 3, 1944, where did she go? A. To my son.

Q. Where was your son? A. Los Angeles.

Q. And she lived with him at Los Angeles?

A. Yes.

Q. She continued to live with your son until she took up with this common law husband? Is that what you are telling the Commissioner?

A. Yes.

Q. Now, Louise, during that—how long did she live with your son from the time she arrived in Los Angeles until she took up with her common law husband? A. I don't know.

Q. Well, now, you received letters from your daughter and son, did you not? A. Yes.

Q. Is it not a fact and don't you know that your daughter lived with and was supported by your son during the first three months after she got out in California? A. Until she got a job.

Q. Now, when did she get a job? [36]

A. I don't know. It was in December when she went to work out there, or January. I think she went to work in some rubber factory out there?

Q. What year? A. 1944.

Q. (By Deputy Commissioner Henderson): What year? A. 1944.

Q. Same year she went out there? A. Yes.

Q. (By Mr. Normann): What was the name of the place she worked?

A. I don't know. Some rubber factory.

Q. How long did she work?

A. I don't know.

Q. They never told you how long?

A. No, sir; no, sir.

Q. You don't know whether she worked one day, one week or one month?

A. No, sir.

Q. Is it not a fact your daughter became pregnant right after she got out to California?

A. From the date the baby was born shows as proof there.

Q. And from the time that she became pregnant until the time the little baby was born, your son supported your daughter during that time; is that correct?

A. I can't say he supported her all of the time. She stayed with the common law husband after she became pregnant a while.

Q. Is it not a fact, Louise, that the common law husband left your daughter in January, 1945?

A. I don't know when he left her. No, he didn't leave her in January. [37]

Q. How do you know he didn't leave her in January?

A. I know it was not in January when I knowed she was pregnant.

Q. You didn't know she was pregnant in January?

A. I knowed it when he had left her. The boy wrote me and told me about it.

Q. (By Deputy Commissioner Henderson):
What boy wrote you? A. My son.

Q. The dead boy in this case? A. Yes.

Q. (By Mr. Normann): When was that, in the
early part of the year?

A. Yes, I think it was.

Q. Try to think; was it not in January or February of last year? A. I can't remember.

Q. Was it not in the real early part of the year, Louise? A. I don't know.

Q. Louise, let me ask you this: I am trying to help you remember, but you remember when Christmastime is? A. Sure.

Q. Was it not shortly after Christmas that you got the letter from your son that your daughter was beaten by her common law husband and had left her, and she was pregnant?

A. I can't remember.

Q. Well, let me help you this way. Was it not before the first of the year you got that letter?

A. No.

Q. You were disturbed by that letter, weren't you? It upset you considerably, didn't it?

A. That's right. [38]

Q. Now is it not a fact that you wrote your son that your holidays were spoiled because of that bad news?

A. No, that was not at Christmas time.

Q. I didn't say it was Christmas time. Was it not right after the first of the year? That is what I am trying to get at. Was it not right after the

first of the year? Was it not before the carnival season? A. I just can't remember.

Q. Your children are promoted in school in February, aren't they? A. Yes.

Q. Now does that help remember the date? Was it in the part of the year, before the children were promoted last year, that you got that letter? I am just trying to help you to remember.

A. I know it was in the wintertime.

Q. Now that is what I am trying to find out. Louise, was it not in the early part of the wintertime?

Deputy Commissioner Henderson: Before Christmas?

Mr. Normann: No, winter starts December 31st. That is what you mean, is it not Louise?

Deputy Commissioner Henderson: I doubt she knows when the winter starts from the calendar.

The Witness: Yes, I do. I went to school, but when a sudden death comes to you like that, and everybody said I stood it up well, and I brought the baby back. I went to the 8th grade. I know the year and months and everything else.

Q. (By Mr. Normann): Now, Louise, we are not trying to trap you; just get something definite out of you that this case can be decided on. Now you say it was in the wintertime. That is what we are trying to find out. Was it shortly before or shortly after Christmas? Let me put it that way to you. [39]

A. It was not in the Christmas time. It was not in December.

Q. All right; let's forget about December. The next month is January; first month of the year.

A. I know it was cold, because I bought her three flannelette nightgowns and sent them to her.

Q. Was that shortly after January 1 of 1945?

A. I don't know anything when it happened; but it was cold.

Q. (By Deputy Commissioner Henderson): Was that after you heard she was pregnant that you got the flannelette nightgowns or before you heard she was pregnant? A. That was before.

Q. Before you heard she was pregnant?

A. Yes.

Q. And you stated it was in January when you first heard about it?

A. I didn't say January.

Q. Well, when? February?

A. I don't know what month it was, but when the boy wrote me and told me the boy beat her up and left her, I don't know what month that is.

Q. The common law husband had already left her when the dead boy wrote you that?

A. Yes.

Q. If the baby was a nine month baby, the baby had to be conceived in January.

A. Well, that's right. That's why he asked me that. It must have happened in January to be born in October.

Q. (By Mr. Normann): But it was when you got this letter from your son that this common law husband had beat her and his notifying you that your daughter was pregnant, that is when you sent the three nightgowns; is that right, Louise? [40]

A. Yes. Listen, I'm getting tired of you cross-talking.

Q. Just answer the questions.

A. I can't answer all that if you keep crossing and crossing me all of the time.

Q. (By Deputy Commissioner Henderson): You have not answered definitely, and that is the reason. His question was, didn't you get that letter from your dead boy that your daughter's common law husband had treated her badly and gotten her pregnant, had you not gotten that letter before you sent the nightgowns? A. Yes.

Q. Because it would seem reasonable that you sent the nightgowns because you knew your daughter would need them when she was pregnant?

A. Yes.

Q. Louise, you know about when it was you sent the nightgowns?

A. No, sir; I really don't know.

Q. (By Mr. Normann): But it was cold?

A. Yes, when I sent them.

Q. (By Deputy Commissioner Henderson): Cold here? A. Yes.

Q. And you stated it was not in December, so it was the first part of 1945? A. Yes, sir.

Q. So the closest you can get to it would be the first part of 1945; might have been January or February or March—the early part of 1945?

A. That's right.

Q. (By Mr. Normann): And that was after you learned your daughter was pregnant; [41] after

getting this letter that your daughter's common law husband beat her?

A. I told that over and over.

Deputy Commissioner Henderson: She said after her daughter's common law husband beat her and left her, that her son wrote and told her about it, and then she sent her daughter three nightgowns.

Q. From that time on your son supported your daughter until the baby was born, so I don't have to repeat it. That is correct, isn't it?

A. Yes, that is correct.

Q. (By Deputy Commissioner Henderson): Your son, the dead boy, didn't send you any money you said, from the time he started taking care of your daughter until his death. Now from the time your daughter got to California, until she took up with this common law husband, your dead boy did support your daughter from the time she got in California, until she took up with this common law husband? A. That's right.

Q. The dead boy supported her? A. Yes.

Q. And from the time she took up with the common law husband until he left her, the common law husband supported her? A. Yes.

Q. You don't know how long that was?

A. No.

Q. But whatever time it was—one month, two months, three months, four months, or five months, during the time the common law husband was supporting your daughter, for I understand from your

testimony, your deceased son sent you money during that time? A. Yes. [42]

Q. And after the common law husband left your daughter, the dead boy had to go back to supporting your daughter? A. Right.

Q. And from that time on, didn't send you any money? A. No, sir.

Q. Now one question more. I want to ask you, now listen carefully so I can understand you. Please listen carefully. The dead boy, the decedent in this case, didn't send you any money after your daughter's common law husband left her? A. No.

Q. The dead boy didn't send you any more money then from the time the common law husband left your daughter, until the dead boy was killed?

A. In November he sent me two ten dollar bills to get some Venetian blinds.

Q. That was all of the money then he sent you from the time the common law husband left your daughter until the dead boy's death, was the \$20?

A. Yes.

Q. And you don't know when the common law husband left your daughter? A. No.

Q. But I believe you remember stating a few minutes ago something about your daughter had been pregnant four or five months when the common law husband left her? A. I do.

Q. Because Captain Normann followed that with the question to the effect he had been gone about five months.

A. I heard that about two Sundays ago. Someone came from Los Angeles and told me about it.

Mr. Normann: Then we object to that as hearsay; as information not within her personal knowledge, and her testimony [43] indicated she was talking of her personal knowledge, and therefore must be stricken from the record.

Q. (By Deputy Commissioner Henderson): Mrs. Johnson, you stated the decedent, your son, sent you \$30 in March—\$15 two times in March, 1945. If that is true, then your daughter's common law husband was living with her then. Are you following me? A. In March?

Q. Listen carefully. You stated a moment ago in March, 1945, the decedent,—the dead boy, sent you \$15 two different times in March, 1945. Now if that is true, then your daughter's common law husband was living with her then, because you have already stated when the common law husband was with your daughter, he supported her; so I take it from what you stated, that the common law husband was still living with your daughter in March, 1945. Then you stated in April, 1945, the dead boy sent you \$30? A. Yes.

Q. So if that is true, Mrs. Johnson, the common law husband was with your daughter in April, 1945, and in May you said you don't know if the dead boy sent you any money or not, so in June you stated the dead boy sent you \$15, and July or August he sent you \$15, and November, \$20. So that would seem to indicate that your daughter's common law husband probably lived with her and left her about May, 1945.

A. I don't know. I know he left her.

Q. (Continuing): Because if your statement is true that while the common law husband was with your daughter, the dead boy sent you money, and when the common law husband was not with your daughter, the dead boy did not send you any money; so it would indicate the common law husband left your daughter in about May, because you can't remember if your son sent you any money in May or not, and it would indicate the common law husband may or may not [44] have been with your daughter in June or July, because your son sent you money; because you earlier said your son did not send you any money after your daughter's common law husband left her. So if that is true, do you still say the dead boy sent you \$15 in June, 1945, and \$15 in July or August, 1945?

A. I don't know.

Q. That is what you told us. But do you still say that is correct? Is that correct to the best of your knowledge?

A. That is the best of my knowledge. I am wool-gathered now. I know he sent me money.

Q. We are talking about June, July and August. Do you think that is right, that he sent you \$15 in June, which might mean the common law husband was living with your daughter, and he sent you \$15 in July or August, and that might indicate the common law husband was still living with your daughter. Now do you say yet, after thinking it over, that you think or say that the dead boy sent you \$15 in June, 1945, and \$15 in July or August, 1945, or now do you think that might be wrong?

A. I can't say.

Q. (By Mr. Normann): Now what——

Q. (By Deputy Commissioner Henderson):
What do you think is right?

A. I think it is right.

Q. (By Mr. Normann): Now what was last
year? A. 1945.

Q. Are you not talking about the year 1944 when
you say this money was received from your son; are
you not talking about the year before last—1944?

A. He sent me money in 1944, too.

Q. He only sent you money in the early part of
1945? [45] A. Huh?

Q. You said he sent you money in 1944?

A. Yes.

Q. He went to the West Coast early part of
1944? A. Yes.

Q. And he sent you money during 1944?

A. Yes.

Q. When you told the Commissioner he sent you
money in June and July and August, you are not
(sic) referring to the year 1944 and not the year
1945, because a few moments ago you testified while
your daughter was pregnant and her common law
husband left her, your son was not sending you
money, but supported your daughter? Answer yes
or no.

A. I don't know.

Deputy Commissioner Henderson: I was won-
dering if she didn't maybe mean 1944 instead of
1945.

Q. (By Deputy Commissioner Henderson): Louise, think carefully and see if these times that the dead boy sent you money, in January, you said you don't know; February, 1945, you don't know; but in March, 1945, \$30; April, 1945, \$30; June, 1945, \$15; July or August, 1945, \$15. Now March, April, May, June, January and February—was that 1944 or 1945 that he sent you that money?

A.. Now look, he sent me money in 1944 and 1945, too.

Q. That may be true. We are not denying that.

A. You see, I am telling you what I can remember. He sent me money in 1944 and left Washington and sent me money from California in 1945.

Q. I am just wondering if you got the two years confused in your mind and maybe you see what I mean.

A. Could I say one more word?

Q. Sure. [46]

A. You know that was my child who lost his life. You know how I feel about it? If I have to go through all this, I would rather for the company to keep this money. I am poor, it's true. I would rather for the company to keep the money.

Deputy Commissioner Henderson: Rest a moment.

A. (Continuing): He lost his life. Why don't they pay me without going through all this red tape? They can keep it. I am tired of answering all these crosses, crosses. The insurance company paid me off. I didn't have no trouble with the insurance company. They paid me off right now.

Redirect Examination

By Mr. Woodville:

Q. Mrs. Johnson, listen to me. I am not trying to twist you up. You say you received a letter from your son telling you about how your daughter's common law husband had treated her and gone off and left her pregnant. Was that about the time, just before or just after you received that money in August, before he died?

A. Before he died.

Q. You said you received money in August, before he died. You said \$15? A. Yes.

Q. Now the August before he died—now that letter that you got from your son—

A. (Interrupting): That was in the winter time, because I sent her the gowns.

Q. Well, you said the common law husband lived with your daughter a while? A. Yes.

Q. She must have become pregnant on or about the 19th day of January, 1945?

A. That's right. [47]

Q. Now your daughter never did write and tell you she was pregnant? A. No, sir.

Q. So you didn't know it until your son wrote and told you? A. Yes.

Q. And your son had to find it out in some way. Mr. Normann: You are telling her.

Deputy Commissioner Henderson: Probably by observation.

Q. (By Mr. Woodville): And now you have testified that he sent you that money for Easter in the month of April. You testified to that?

A. Yes.

Q. Was it before or after that, that you got that letter about your daughter? Now, if you can't remember, tell me, and if you can, say so.

A. I can't remember.

Q. You don't remember whether it was before or after that? A. No.

Q. Now when you testified that your son didn't send you any money after your daughter's common law husband left her, because he had to take care of her, you mean he didn't send you any money at all or ceased sending regularly as he did before your daughter went out there?

A. Not regular.

Q. He didn't send it regularly after your daughter went out there?

A. Because she was pregnant.

Q. In 1944?

A. I can't go back that far.

Q. Before your daughter went out there, your son send you money regularly? A. Yes. [48]

Q. Regular? A. Yes, right every week.

Q. (By Deputy Commissioner Henderson): Every week? A. Yes.

Q. (By Mr. Woodville): Every week?

A. Yes.

Q. You meant he didn't send you money regular after that?

A. After the boy left the girl.

Q. But he did send you this money that you testified about? A. Yes.

Recross-Examination

By Mr. Normann:

Q. How many of them came by Western Union?

A. So many I went there twice and they told me I would have to have the dates.

Q. You couldn't furnish them?

A. No. I saw the chief and he told me I would have to have the dates.

Mr. Normann: That's all.

Mr. Woodville: That's all.

Deputy Commissioner Henderson: No further questions?

Mr. Woodville: No, sir.

Q. (By Deputy Commissioner Henderson): Mrs. Johnson, was your husband working during the time that the dead boy was sending you money?

A. Yes, sir.

Q. Can you give us any idea how much he was making?

A. My husband?

Q. Yes. A. My husband makes? [49]

Q. At that time, meaning when the dead boy was sending you money, can you give us any idea what your husband was making?

A. \$28 I think.

Q. \$28 a week?

A. Yes, and after that he just got promoted to a tractor and he makes \$36, and they take out. He works at the Naval Supply Depot.

Q. How many was in your family that had to be supported at that time?

A. The same six.

Q. Six children? A. Yes.

Q. And yourself and your husband?

A. Yes. I have a girl who graduated from high school and went to the "Y" and took up shorthand and typing.

Q. At that time you had six children, yourself and your husband? A. Yes.

Q. So there were eight in your family?

A. Yes.

Q. Any of the children working at that time?

A. No.

Q. Were you renting the house you lived in or own it? A. Rent.

Q. How much rent did you pay at that time?

A. \$12.

Q. \$12 a month? A. Yes.

Q. And your husband was making \$28 to \$36 a week? A. Yes.

Q. And out of his income the whole family had to be supported? A. That's right.

Q. Food, clothes, house rent?

A. Insurance, societies. [50]

Q. All of the family expenses had to be met out of your husband's income? A. Yes, sir.

Q. Was your husband's income sufficient to meet your living expenses at that time?

A. No; I couldn't get along with what he was making.

Q. Why? A. Just was not enough.

Q. Why, just wasn't enough?

A. You know you can't get things cheap no more.

Q. What was done about it?

A. That was the cause of the child going to Washington, to make more money and help support the family. He worked and helped take care of the family.

Q. Was it under that same circumstance that he sent you the money? A. Yes.

Q. In other words, if I understand you correctly, he went to Washington to get a job to to help support the family? A. Yes. Right.

Q. Because as you say, the income from your husband was not sufficient to pay expenses of the house and support your family? A. Yes.

Q. So your son went to Washington State—Bremerton, to get a job and help support the family? A. Yes; first he went to Texas.

Q. The money he sent you after he went to Washington State, was to help support you and your children and his father? A. Right.

Q. Which was the family home?

A. That's right.

Q. Because the father's income was not enough, he went out there [51] to help the family?

A. Correct.

Q. Is that what you mean? A. Yes.

Q. And he kept up—that means trying to do his part by the money he sent you that you have told us about? A. Yes, sir.

Q. Is that what you mean? A. Yes.

Q. Then according to the family budget—that means money you have—your husband's income and the out-go, if I understand you, you needed the money the dead boy sent you? A. Yes.

Q. Did you get any benefit out of that money the dead boy sent you? A. Yes, sir.

Q. How did it help you?

A. How did it help me?

Q. Yes, because a few minutes ago you said you bought clothes and things for the children. How did that benefit you, yourself?

A. Well, I done without to take care of my children.

Q. Did you buy clothes out of that for yourself?

A. Sure, sure. Shoes and things like that.

Q. What other ways, if any, did that money he sent you benefit you, yourself?

A. How did it benefit me? Well, I bought dresses and underwear and things like that.

Q. For yourself?

A. Yes, because with what my husband makes, I can't buy clothes for myself, could I?

Q. You also said you bought groceries?

A. Yes. [52]

Q. With some of the money he sent you?

A. Sure.

Q. If you would just follow me carefully, it would be easier for you to answer questions. Then you got the benefit out of the groceries that you bought out of the money, and your children got benefit out of the groceries bought out of that money? A. Everybody got benefit.

Q. You filed the claim and I want to know how you, yourself, benefited out of the money that the dead boy sent home. So you got clothes for yourself and bought groceries used for the whole fam-

ily, and you got your part of the groceries like they got theirs. Is that what you mean? A. Yes.

Q. So you were relying on money he sent home to help meet the family expenses? A. Yes.

Q. Were you looking forward to receiving the money from the dead boy? A. Yes.

Q. You really needed that money?

A. Yes.

Q. Did you rely on that money the dead boy sent to help meet your expenses? A. Yes.

Q. You rely on him sending that money?

A. Yes.

Q. You depended on the dead boy sending you money? A. Yes, I depended.

Q. Was that the only outside source of help that you had other than your husband?

A. That is all.

Q. None of the other children were working?

A. No.

Q. They were an expense rather than help?

A. Yes.

Redirect Examination

By Mr. Woodville:

Q. You needed the money the boy sent you?

A. Yes.

Recross-Examination

By Mr. Normann:

Q. Now as a fact, Louise, you have one child named Edward Johnson, haven't you?

A. Yes, sir.

Q. Edward is 15 years of age? A. Yes.

Q. What is the name of the oldest girl?

A. Lucille Idelle.

Q. One of the daughters had a job and paid for her own clothes and school course?

A. Paid for her own school? She had no job.

Q. Your daughter didn't have a job?

A. That oldest one used to work.

Q. Is that the one that paid for her clothes and schooling?

A. I paid for her schooling. Which one are you talking about?

Q. The oldest one? A. In Los Angeles.

Q. You said she went to work after she got to California? A. Yes.

Q. You didn't support her?

A. No. After she got pregnant the boy took care of her.

Q. She go to school here? A. Yes.

Q. Who paid for that schooling? [54]

A. We did.

Q. She didn't work while she was here?

A. Oh, yes.

Q. Who did she work for?

A. In a private home.

Q. You mean she worked as a servant?

A. Yes, and another place washing the cars and trains—Public Belt I think.

Q. She worked every day in the week?

A. Yes.

Q. How much did she make?

A. I don't know because she was not at home with me.

Q. She lived in New Orleans but not with you?

A. Yes.

Q. That is the one that became pregnant?

A. Yes.

Q. During that time, you were not supporting her?

A. No.

Q. None of the other children worked, is that true?

A. No.

Q. How much insurance did you pay a week, Louise, at that time?

A. Well, I will have to figure all that out.

Q. You figure that out. Here is a pencil and paper. You figure that out.

(The witness listed companies and amounts on paper.)

Q. (Continued): You paid National, \$1.70?

A. Every two weeks.

Q. And every two weeks you paid Unity——

A. \$1.66.

Q. \$1.66, and you paid 94c to who?

A. To the Keystone.

Q. And who did you pay this \$2.48 to? [55]

A. Standard and Acme 63c a week.

Q. Now the National you pay 85c a week. \$1.70 every two weeks?

A. Yes.

Q. You paid Unity——

A. \$1.66.

Q. Every two weeks?

A. Yes.

Q. Which is 83c a week?

A. Yes.

Q. And Keystone, you paid them 94c a week?

A. Yes.

Q. And this \$2.48?

A. That is Standard, and Acme.

Q. This \$2.48 is every week or two weeks?

A. \$1.24 every week.

Q. And Acme? A. 63c a week.

Q. In addition thereto, you paid \$12 for your rent. Is that correct? A. Yes.

Q. Now you don't have any credit accounts in any stores downtown? A. Yes.

Q. You did? What stores do you have credit accounts in? A. Diboll.

Q. How much credit did you have with them, or how much would you pay for that every week?

A. \$4 every two weeks.

Q. On your furniture?

A. Yes, and sometimes I put things in the "will call."

Q. In the lay-away? A. Yes.

Q. You would buy some things and pay down so much, and pay so [56] much, and pay so much every week until you paid it off in full? A. Yes.

Q. You were always able to meet your bills every week? A. Yes.

Q. You have never been sued? A. No.

Q. You have a good name for credit references?

A. Yes.

Q. Your husband has always worked steadily?

A. Yes.

Q. And he gives you all his money every week?

A. Yes.

Q. You work out any? A. No.

Q. Your husband do any extra work during that time? A. No.

Q. In other words, with the money you received,

you were able to maintain and support your family and meet all your family needs?

A. Correct.

Q. You have been doing that since your son has been dead? A. That's right.

Q. In other words, you are living just the same since your son was killed?

A. No indeed; I can't.

Q. You are paying all your bills?

A. I done paid them out.

Q. You don't have all those bills any more?

A. Don't food cost more?

Q. You are able to pay your bills from week to week now, as you were before your son died?

A. No.

Q. You owe any bills now? [57] A. No.

Q. You have all your bills paid?

A. I need things now.

Q. I said since your son died, you have been able to pay your bills and grocery bills?

A. I have no grocery bills. I pay cash but I am on a lien.

Q. (By Deputy Commissioner Henderson): Your money don't go as far as it used to?

A. Now you are talking. Bread is 12c a loaf now and rice is 25c a pound.

Redirect Examination

By Mr. Woodville:

Q. Now you have to deny yourself things you used to get when your son was living? A. Yes.

Mr. Woodville: I offer in evidence from the Board of Health of the Parish of Orleans, more

particularly from the Recorder of Births, Marriages and Deaths, evidence of the marriage of Robert Johnson and Mildred Washington (colored), according to which certificate the said marriage was registered with the Recorder of Births, Marriages and Deaths on the 23rd day of December, 1919.

Mr. Normann: To which we object on the grounds the marriage certificate on its face shows it was not a legal marriage between the witness here, as she has identified herself in these proceedings and her husband, who is also present here. This shows it was a marriage between Mildred and not Louise at all.

Q. (By Mr. Woodville): Louise, Mildred is your middle name? [58] A. Yes.

Q. (By Deputy Commissioner Henderson): What was your maiden name?

A. Louise Mildred Washington.

Q. This copy of marriage certificate which your attorney has offered in evidence shows the marriage of Robert Johnson to Mildred Washington. That was your middle name? A. Yes.

Q. Louise Mildred Washington was your full name? A. Yes.

Q. So this Mildred Washington stated in this certificate is you? A. Yes.

Q. Is that right? A. Yes.

Deputy Commissioner Henderson. The Deputy Commissioner will receive it in evidence over the objection of Counsel for Defendants. The Deputy Commissioner of District 13 will use it for whatever value he thinks it has. The court reporter is

authorized to identify the same as Claimant's Exhibit No. 1.

(Thereupon there was offered and received in evidence certificate from the Recorder of Births, Marriages and Deaths for the Parish of Orleans, State of Louisiana, showing the marriage of Robert Johnson and Mildred Washington, on the 21st day of December, 1919, by Rev. P. Landry, and will be found at the conclusion of this transcript, marked for identification, Claimant's Exhibit No. 1.)

Mr. Woodville: I offer in evidence certificate from the Recorder of Births, Marriages and Deaths of the Board of Health of the Parish of Orleans, recordation in that office of the birth on the 27th day of May, 1924, of Robert Johnson, Jr. (colored), lawful issue of [59] Louise Washington and Robert Johnson, Sr.

Deputy Commissioner Henderson: Any objection?

Mr. Normann: Subject to the same objection. I suppose you will make the same ruling.

Q. (By Deputy Commissioner Henderson): Mrs. Johnson, in this copy of birth certificate of Robert Johnson, Jr., it is stated he was the lawful issue of Robert Johnson, Sr., and Louise Washington. Louise Washington was your middle name?

A. Yes.

Q. Your full name was Louise Mildred Washington? A. Yes.

Q. So the Washington — Louise Washington stated in this birth certificate, is you?

A. That's right.

Deputy Commissioner Henderson: The same is received into evidence over the objection of Counsel for Defendant for whatever use the Deputy Commissioner of the 13th Compensation District may use it for or consider it, and the court reporter is authorized to identify the same as Claimant's Exhibit No. 2.

(Thereupon there was offered and received in evidence certificate of the birth of Robert Johnson, Jr., on the 27th day of May, 1924, as recorded on the 16th day of June, 1924, and will be found at the conclusion of this transcript marked for identification, Claimant's Exhibit No. 2.)

Mr. Woodville: I offer in evidence photostatic copy of the funeral expense bill of W. D. Fisher & Son, Inc., covering the expenses for their participation in the funeral and burial of the deceased, Robert Johnson, Jr. [60]

Deputy Commissioner Henderson: Any objection, Mr. Normann?

Mr. Normann: No.

Deputy Commissioner Henderson: Same is received in evidence, and the court reporter is authorized to identify the same as Claimant's Exhibit No. 3.

(Thereupon there was offered and received in evidence, photostatic copy of statement of

W. D. Fisher & Son, 4700 Avalon Blvd., Los Angeles, California, in the amount of \$511.75 for the preparation of the body of Robert Johnson, Jr., which will be found at the conclusion of this transcript marked for identification Claimant's Exhibit No. 3.)

Mr. Woodville: I offer in evidence itemized bill of Dennis Mortuary Service, showing the amount due them and paid by the claimant herein, for service rendered by them in the funeral and burial of the deceased, in the amount of \$192.88.

Deputy Commissioner Henderson: Any objection, Mr. Normann?

Mr. Normann: No, sir.

Deputy Commissioner Henderson: Same is received in evidence and the court reporter is authorized to identify the same as Claimant's Exhibit No. 4.

(Thereupon there was offered and received in evidence, Statement of Dennis Mortuary Service, 1940 Eagle Street, New Orleans, La., in the amount of \$192.88 marked "Paid," and which will be found at the conclusion of transcript, marked Claimant's Exhibit No. 4.)

Deputy Commissioner Henderson: Gentlemen, have you any further questions of the witness? [61]

Mr. Normann: No, sir.

Mr. Woodville: No, sir.

Deputy Commissioner Henderson: The witness is excused. Mr. Woodville, do you have any further witnesses?

Mr. Woodville: No, sir.

Deputy Commissioner Henderson: You rest your case?

Mr. Woodville: Yes, I rest.

Deputy Commissioner Henderson: You have any witnesses, Mr. Normann?

Mr. Normann: No, sir.

Deputy Commissioner Henderson: You rest your case?

Mr. Normann: Yes.

Deputy Commissioner Henderson: Gentlemen, both sides having rested their case, that concludes the hearing. I may state the transcript of testimony in this case will be returned to the Deputy Commissioner of the 13th Compensation District in California for his decision.

The court reporter will show the hearing was concluded at 12:27 p.m.

(Thereupon the hearing was adjourned at 12:27 p.m.)

State of Louisiana,
Parish of Orleans—ss.

I, Earle J. Christenberry, Official Reporter, New Orleans, Louisiana, certify that the foregoing pages 1 through 70, inclusive, are a true and accurate transcript of my shorthand notes taken at the hearing on June 4, 1946, continued to July 2, 1946, and further continued and held on July 16th, 1946.

/s/ EARLE J. CHRISTENBERRY,
Official Reporter. [62]

State of California,
City and County of San Francisco—ss.

G. N. Weeks, being first duly sworn, deposes and says that he is the Asst. Marine Secretary of the Fireman's Fund Insurance Company, a corporation, one of the libelants in the above matter; that he has read the foregoing Libel for Injunction and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ G. N. WEEKS.

Subscribed and sworn to before me this 30th day of June, 1947.

[Seal] /s/ LAURA L. MacHUGH,
Notary Public in and for the County of San Francisco, State of California.

My commission expires Jan. 15, 1948.

[Endorsed]: Filed July 2, 1947. [63]

In the District Court of the United States,
Southern District of California, Central Division

Civil Action No. 7284 M

CALIFORNIA SHIP SERVICE COMPANY and
FIREMEN'S FUND INSURANCE COM-
PANY,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner,

Respondent.

ANSWER OF RESPONDENT PILLSBURY

Now comes the respondent, Warren H. Pillsbury, deputy commissioner, and for his answer to the libel for injunction herein:

- (1) Admits the allegations contained in Articles I, II, III, IV, V and VI of the libel.
- (2) Denies the allegations contained in Article VII of the libel.
- (3) Denies the allegations contained in Article VIII of the libel to the effect that the compensation order is not in accordance with law.

Further answering the libel the respondent deputy commissioner [64] avers that as shown by the transcript of testimony taken before Deputy Com-

missioner Henderson on June 4, 1946, and July 16, 1946, the findings of fact in the compensation order complained of except the finding that the deceased's average weekly wage exceeded \$37.50, are supported by evidence and under the law such findings are final and conclusive and not subject to judicial review; that the parties stipulated at the hearing before the deputy commissioner to an average weekly wage of \$29.62 (T. 11) and there was no other evidence in the record before the deputy commissioner of the deceased's earnings for substantially the whole of the year preceding his injury upon which to make a determination of the deceased's average weekly wage as provided in section 10 of the Longshoremen's Act (33 U.S.C.A. sec. 910).

Wherefore, this respondent prays that judgment be entered herein remanding the case to the respondent, Deputy Commissioner Pillsbury, to make a new finding with reference to the deceased's average weekly wage at the time of his injury, and to adjust the amounts of the awards accordingly, and that the compensation order in all other respects be affirmed and that the libel be dismissed.

/s/ JAMES M. CARTER,

United States Attorney.

/s/ CLYDE C. DOWNING,

Assistant United States Attorney, Attorneys for Respondent Pillsbury.

[Endorsed]: Filed Nov. 3, 1947. [65]

[Title of District Court and Cause.]

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Now comes the respondent, Warren H. Pillsbury, deputy commissioner by his attorneys and moves this Honorable Court to enter upon the pleadings and upon the record herein, summary judgment in favor of the respondent, dismissing the action and in support thereof says:

(1) That, as shown by the pleadings and record filed herein, the claimant does not state a cause of action or claim against this defendant upon which relief could be granted.

(2) That, as shown by the pleadings and record filed herein, the findings of the deputy commissioner in the compensation order complained of (with the exception of the finding as to the deceased's [66] average weekly wage) are supported by evidence in the transcript of testimony taken at the hearings before the deputy commissioner and, under the law, said findings of fact are final and conclusive and not subject to judicial review.

(3) That, as shown by the pleadings and the record filed herein, the compensation order complained of is in accordance with law.

(4) That the pleadings show that there is no issue as to any material fact and that the respondent is, as a matter of law, entitled to judgment as

prayed for in the answer, remanding the case and dismissing the complaint.

/s/ JAMES M. CARTER,

United States Attorney.

/s/ CLYDE C. DOWNING,

Assistant United States Attorney, Attorneys for
Respondent Pillsbury.

[Endorsed]: Filed Nov. 3, 1947. [67]

At a stated term, to wit: The September Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 1st day of December, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Paul J. McCormick,
District Judge.

[Title of Cause.]

For (1) setting for trial, and (2) motion of respondent for summary judgment; L. B. Gallagher, Esq., present for libellant; Clyde C. Downing, Esq., present at end of session, for respondent;

Court orders cause continued to Feb. 13, 1948, for said proceedings. [68]

[Title of District Court and Cause.]

ANSWER OF RESPONDENT PILLSBURY

Now comes the respondent, Warren H. Pillsbury, deputy commissioner, and for his answer to the libel for injunction herein;

- (1) Admits the allegations contained in Articles I, II, III, IV, V and VI of the libel.
- (2) Denies the allegations contained in Article VII of the libel.
- (3) Denies the allegations contained in Article VIII of the libel to the effect that the compensation order is not in accordance with law.

Further answering the libel the respondent deputy commissioner avers that as shown by the transcript of testimony taken before Deputy Commissioner Henderson on June 4, 1946, and July 16, 1946, the findings of fact in the compensation order complained of except the finding that the deceased's average weekly wage exceeded \$37.50, are supported by evidence and under the law such [69] findings are final and conclusive and not subject to judicial review; that the parties stipulated at the hearing before the deputy commissioner to an average weekly wage of \$29.62 (T. 11) and there was no other evidence in the record before the deputy commissioner of the deceased's earnings for substantially the whole of the year preceding his injury upon which to make a determination of the de-

ceased's average weekly wage, as provided in section 10 of the Longshoremen's Act (33 U.S.C.A. Sec. 910).

Wherefore, this respondent prays that judgment be entered herein remanding the case to the respondent, Deputy Commissioner Pillsbury, to make a new finding with reference to the deceased's average weekly wage at the time of his injury, and to adjust the amounts of the awards accordingly, and that the compensation order in all other respects be affirmed and that the libel be dismissed.

/s/ JAMES M. CARTER,
United States Attorney.

/s/ CLYDE C. DOWNING,
Assistant United States
Attorney.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Dec. 4, 1947. [70]

At a stated term, to wit: The February Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 16th day of February, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Chas. C. Cavanah,
District Judge.

[Title of Cause.]

For hearing (1) motion of respondent for summary judgment and (2) trial; L. B. Gallagher, Esq., appearing as proctor for libelants; Clyde C. Downing, Esq., Ass't U. S. Att'y, appearing as proctor for respondent; at 10:47 a.m., both sides answer ready;

Attorney Gallagher makes a statement to the Court on behalf of libelants and refers the Court to libelant's brief in opposition to motion for summary judgment. Attorney Downing makes a statement to the Court on behalf of respondent.

Respective counsel make further statements of the respective contentions of the libelants and of the respondent.

The Court orders the said motion for summary judgment taken under advisement until 3 p.m. today. At 11:10 a.m. court recesses until 3 p.m. today.

At 3 p.m. court reconvenes in this case and counsel for respondent being present, and counsel for libelants being absent, and later, at 3:12 p.m., counsel appearing for libelants, and counsel for respondent being present as before, the Court makes a statement that there is a material issue of fact to be settled on this record and which cannot be settled by a Summary Judgment, and orders that said motion of respondent for summary judgment is de-

nied. The Court orders that counsel proceed with the case on its merits.

Attorney Gallagher makes a statement that libelants will submit the case on the merits on the record sent up by the respondents and on the argument presented this morning, and the brief of libelants filed [72] in response to the motion for summary judgment, and asks time for the proceedings this morning to be written up by the court reporter.

Attorney Downing makes a statement and states he will submit the case on the Memorandum of the Respondent filed in support of the motion for summary judgment and the record.

Statements are made by the Court and by respective counsel.

On motion of counsel for respondent, it is ordered that Resp. Ex. A, which is a transcript of testimony, certified by Warren H. Pillsbury, etc., under date of July 17, 1947, at San Francisco, order admitted into evidence, and same is so marked. The Court orders this cause stand submitted for decision, and that counsel submit their respective statements and the reporter's transcript of proceedings this day to the Court in the next few days. [73]

At a stated term, to wit: The February Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 1st day of March, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Chas. C. Cavanah,
District Judge.

[Title of Cause.]

At this time the Court makes a statement and gives its oral decision in this cause which was heretofore heard on its merits and submitted, and orders judgment in favor of respondent, and directs that counsel for the respondent prepare, serve and present proposed findings of fact and conclusions of law, and judgment for signature. The clerk is directed to notify counsel of this order. [74]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Libelants respectfully decline to approve as to form the proposed Findings of Fact and Conclusions of Law submitted to proctors for libelants and returned without approval herewith, upon each of the following grounds:

I.

There was no trial de novo.

II.

The Court did not conduct any trial of any disputed issue of fact.

III.

No evidence was introduced in the sense that oral testimony was offered or received for the purpose of proving or tending to prove any issue of fact raised by the pleadings. [75]

IV.

The only questions submitted to the Court for decision were questions of law as raised by the pleadings, memoranda of points and authorities and the oral proceedings on respondent's motion for a summary judgment.

V.

The sole province of the Court in this matter, in the absence of a trial de novo of jurisdictional or fundamental facts, is to enjoin the award in accordance with the prayer of the libel or to dismiss the libel in the event the Court is justified in concluding that the procedure adopted and pursued by the Deputy Commissioner and the Compensation Order were and each thereof was in accordance with law.

VI.

Libelants respectfully refer the attention of this Honorable Court to the manner and method by which the Honorable Paul J. McCormick, Senior District Judge, disposed of a libel for an injunc-

tion in the matter entitled in the United States District Court, Southern District of California, Southern Division, Freeman Steamship Company, et al., Libelant, v. Warren H. Pillsbury, Deputy Commissioner, U. S. Employees' Compensation Commission, Respondent, No. 706.

Respectfully submitted,

LASHER B. GALLAGHER,
JOHN R. BLACK,
EDWARD R. KAY,

By /s/ LASHER B. GALLAGHER,
Proctors for Libelants. [76]

Entered Mch. 15, 1948.

/s/ CHARLES C. CAVANAH,
Judge.

Received copy of the within Objections this 15th day of March, 1948.

JAMES M. CARTER,
U. S. Atty.

By /s/ GERTRUDE M. JOHNSON,
Proctors for Respondent.

[Endorsed]: Filed Mar. 15, 1948. [77]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial before the Honorable Charles C. Cavanah, Judge of the District Court of the United States for the Southern District of California, on the 13th day of February, 1948, and the trial was completed on said date. The cause was tried before the Court sitting without a jury.

Libelants, California Ship Service Company, and Fireman's Fund Insurance Company, appeared at said trial by Lasher B. Gallagher, their attorney of record, and the defendant, Warren H. Pillsbury, Deputy Commissioner of the 13th Compensation District of the United States Employees Compensation Commission, appeared by Clyde C. Downing, Assistant United States Attorney, as his attorney of record; and evidence having been introduced and cause submitted to the Court and the Court being fully advised in the premises, authorized the findings of fact and conclusions of law as hereinafter set out. [78]

The Court, therefore, now makes its findings of fact and conclusions of law as follows, and directs the entry of judgment accordingly thereon:

FINDINGS OF FACT

That libelant, California Ship Service Company, at all times herein mentioned, has been, and is now a corporation. That libelant, Fireman's Fund In-

insurance Company, at all times herein mentioned, has been, and is now a corporation. That on the 6th day of December, 1945, Robert Johnson, Jr., was in the employ of the employer above named at Los Angeles Harbor in the State of California in the 13th Compensation District established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act and that the liability of the employer for compensation under said Act was insured by Fireman's Fund Insurance Company. That on said day said employee while performing service for the employer as a laborer and engaged at ship repair operations on a completed vessel on navigable waters of the United States at said harbor, sustained personal injury occurring in the course of and arising out of his employment and resulting in death the same day as follows: He fell from a ladder while descending into a tank of the ship, sustaining fatal injury. That the employer furnished the employee with medical treatment, etc., in accordance with Section 7(a) of the said Act.

That the average weekly earnings of the employee at the time of his injury exceeded \$37.50.

That the employee left surviving him and dependent in fact upon him for support his Mother, Louise Johnson, Sr., born December 28, 1905, and an adult sister, Louise Johnson, born December 11, 1922, a child of said Louise Johnson named Joseph Charles Forest Johnson, born October 19, 1945, and the following minor brothers and sisters: Lucille Idel Johnson, born February 29, 1929; Edwin Johnson, born July 22, 1930; Hilda Mae Johnson,

born March 30, 1932; Harold Johnson, born April 4, 1934; Walter Johnson, born June 22, 1936, and Romalis Johnson, born November 20, 1940. That claimants [79] Louise Johnson, Sr., Lucille Idel Johnson, Edwin Johnson, Hilda Mae Johnson, Harold Johnson, Walter Johnson, and Romalis Johnson are entitled to a death benefit at the rate of 25 per cent of the average weekly wages of the employee for Louise Johnson, Sr., his mother, and 15 per cent of said weekly wages for each of the said minor brothers and sisters, the share of each minor child to run until such child reached or will reach the age of 18 years; provided, however, that the total allowance to all dependents may not exceed $66\frac{2}{3}$ per cent of the said average weekly wages or \$25.00 a week. That such death benefit at the rate of \$25.00 a week shall be paid to Louise Johnson, Sr., for the support and maintenance of herself and said minor children commencing with the date of the death of Robert Johnson, Jr. That the amount accrued to and including the date of the hearing July 2, 1946, 29 $\frac{5}{7}$ weeks, is \$742.85, no part of which has been paid.

That Louise Johnson, a sister born December 11, 1922, was wholly dependent upon the deceased employee at the time of his death for her support, but was over the age of 18 years, and has not been shown to have been physically or mentally incapacitated from earning her living and is not entitled to share in said death benefit. That a child of said Louise Johnson, Joseph Charles Forest Johnson, born October 19, 1945, was a nephew of the

deceased employee and wholly dependent upon him for support at the time of his death, but is not within the relationship to the employee within which valid claim may be made of death benefit.

That the reasonable expense of burial to the employee was over \$200.00, and that \$511.75 is owing thereon by claimant to W. D. Fisher & Son, Inc., undertakers, 4700 Avalon Blvd., Los Angeles; that claimants are entitled to an allowance of \$200.00 upon said burial expense to be paid direct to said undertaker.

That J. Warren Woodville, claimant's attorney, 821 Maison Blanche Building, New Orleans 16, La., has rendered legal service to claimants in the above matter in the present claim for which a fee is approved in the sum of \$65.00 and lien granted thereon on compensation herein awarded. [80]

From the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

That said findings of fact and award or Compensation Order are in accordance with law for the reason that said findings are supported by substantial evidence introduced in said proceeding before said Commissioner.

II.

That the libelants are not entitled to a mandatory or other injunction directed to said Commissioner to set aside certain findings of fact and award or compensation award or to amend said

findings of fact and award or compensation order in any particular, and that respondents are entitled to judgment dismissing plaintiff's complaint and for his cost of suit herein expended.

Dated: This 15th day of March, 1948.

/s/ CHARLES C. CAVANAH,
Judge, United States District
Court.

Not approved as to form; and affirmatively disapproved and objected to as indicated in written objections to findings filed simultaneously with the lodging of these proposed findings of fact and conclusions of law.

/s/ LASHER B. GALLAGHER,
Attorney for Libelant.

[Endorsed]: Filed Mar. 15, 1948. [81]

In the District Court of the United States in and
for the Southern District of California,
Central Division

No. 7284-M Civil

CALIFORNIA SHIP SERVICE COMPANY, a
corporation, and FIREMAN'S FUND IN-
SURANCE COMPANY, a corporation,
Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner, 13th Compensation District,
Respondent.

JUDGMENT

The above-entitled matter having come on regularly for hearing on the 13th day of February, 1948, before the above-entitled Court, the Honorable Charles C. Cavanah, Judge Presiding, and the matter having been heard and the findings of fact and conclusions of law having been signed and filed herein, and the Court being fully advised:

It Is Now Ordered, and Decreed that Complainant take nothing by reason of its complaint on file herein, and that the same be, and is hereby, dismissed, and respondents are awarded costs of suit incurred herein.

Costs taxed at \$25.00.

Dated: This 15th day of March, 1943.

/s/ CHARLES C. CAVANAH.

Judge, United States District
Court.

Not Approved As to Form or Otherwise.

/s/ LASHER B. GALLAGHER.

Attorney for Libelants.

[Endorsed]: Filed Judgment entered and Docketed March 15, 1943. Book C. O. 49, Page 309. [32]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Paul J. McCormick, Judge of the
United States District Court, Southern District
of California, Central Division:

Libelants respectfully pray that they and each of
them may be permitted to take an appeal from the
final decree entered in the above Court on March 15,
1943, to the United States Circuit Court of Appeals,
for the Ninth Circuit, for the reasons specified in
the Assignments of Error which are filed herewith.

Dated May 14, 1943.

/s/ LASHER B. GALLAGHER.

Proctor for Libelants.

[Endorsed]: Filed May 14, 1943. [53]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Now come the Libelants and hereby assign the following errors in the above entitled proceedings:

I.

The district court erred in failing to set aside the compensation order upon the ground that the same is not in accordance with law.

II.

The district court erred in deciding, ruling and concluding that the surviving mother as a parent of the deceased was entitled to 25 per centum of "average weekly earnings of the employee, with a base rate of \$37.50," and that the minor brothers and sisters are entitled in addition to 15 per centum per week of said sum of \$37.50, and the said district court erred in its [84] construction of the Longshoremen's and Harbor Workers' Compensation Act in this respect regardless of whether or not the said persons were or either of them was dependent upon the deceased at the time of the injury which caused his death.

III.

The district court erred in deciding, ruling and concluding that the Longshoremen's and Harbor Workers' Compensation Act entitles a surviving mother and surviving minor brothers and sisters, or either of said classes of persons, to a compensation order which will result in the payment to both or either of said classes the maximum sum of \$7500.00,

regardless of whether or not said persons were totally or partially dependent upon the deceased at the time of the injury which caused his death and regardless of the period of time preceding the injury causing the death during which such persons were or either of them was actually dependent upon such employee.

IV.

The district court erred in deciding, ruling and concluding that each and every class of persons, regardless of relationship and regardless of legal duty existing on the part of the employee to support the claimant of a death benefit, is entitled to collect the maximum death benefit of \$7500.00 from the employer or the employer's insurance carrier, and in deciding and concluding that totally or partially dependent surviving parents and minor brothers and sisters are in exactly the same class and entitled to exactly the same maximum award as a surviving wife or surviving natural and totally dependent children of the deceased.

V.

The district court erred in refusing to set aside and enjoin the enforcement of the compensation order upon the ground that there is no evidence, substantial or otherwise, in the record of the proceedings before the deputy commissioner showing that [85] there was no surviving wife or natural child of the deceased; it being the contention of libelants that substantial proof of the non-existence of a lawful wife or natural child of the deceased is

a jurisdictional prerequisite to the making of a compensation order for the benefit of a surviving parent or surviving minor brothers or sisters.

VI.

The district court erred in failing to find, decide, conclude or rule, one way or the other, upon the contention of libelants that there was no substantial evidence upon which the deputy commissioner could find that any claimant was dependent, totally or partially, upon the deceased at the time of the injury which caused his death.

VII.

The district court erred in refusing to find, decide, conclude or rule, that there is no substantial evidence in the record of the proceedings before the deputy commissioner to support any finding, express or implied, that minor brothers or sisters of the deceased were or either of them was dependent upon the deceased at the time of the injury which caused his death.

VIII.

The district court erred in finding that the average weekly earnings of the deceased exceeded \$37.50 per week in the face of a definite and specific stipulation entered into by the parties involved in the proceedings before the deputy commissioner that the average weekly wage of the deceased was the sum of \$29.62.

IX.

The district court erred in making findings of fact upon the theory that the said district court had

tried the issues de novo when the sole and only province of said district court was to determine whether the compensation order was or was not in accordance with the law. [86]

Dated: May 13th, 1948.

/s/ LASHER B. GALLAGHER,
Proctor for Libelants.

[Endorsed]: Filed May 14, 1948. [87]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

Whereas, Libelants, California Ship Service Company, a corporation, and Fireman's Fund Insurance Company, a corporation, have or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain final decree heretofore made and entered in the above entitled cause on March 15, 1948; and

Whereas, Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the Respondent here in and unto whom it may concern in the sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which and truly to be made it does hereby bind itself, its successors and assigns firmly by these

presents [88] and agrees that in case of default or contumacy on the part of the said Appellants, California Ship Service Company, a corporation, and Fireman's Fund Insurance Company, a corporation, execution may issue against it, its goods, chattels and lands;

Now, Therefore, the condition of this obligation is such that if the above named Appellants, California Ship Service Company, a corporation, and Firemen's Fund Insurance Company, a corporation, shall prosecute said appeal with effect, and pay all costs which may be awarded against them as such Appellants if the appeal is not sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, May 7th, 1948.

FIREMAN'S FUND

INDEMNITY COMPANY,

[Seal] By /s/ A. I. STODDARD,

Attorney-in-Fact.

Examined and recommended for approval as provided in Rule 13.

/s/ LASHER B. GALLAGHER,

Proctor for Appellants.

I hereby approve the foregoing Bond this 14th day of May, 1948.

/s/ PAUL J. McCORMICK,

United States District Judge.

State of California,
County of Los Angeles—ss.

On this 7th day of May, 1948 before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared A. I. Stoddard, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Los Angeles the day and year in this certificate first above written.

[Seal] /s/ M. E. BEETH,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires March 24, 1949.

[Endorsed]: Filed May 14, 1948. [89]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The petition of libelants for an appeal from the final decree entered in the above entitled cause on March 15, 1948, is hereby granted and the appeal is allowed.

It Is Hereby Ordered, that a certified transcript

of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Los Angeles, California, this 14th day of May, 1948.

/s/ PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed May 14th, 1948. [90]

[Title of District Court and Cause.]

NOTICE OF APPEAL

The libelants hereby appeal and each of them appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court entered herein on March 15, 1948, and from each and every part thereof.

Dated: May 10th, 1948.

/s/ LASHER B. GALLAGHER,

Proctor for Libelants.

To: Edmund L. Smith, Clerk, United States District Court. James M. Carter, United States Attorney; Clyde C. Downing, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, Calif.; Proctors for Respondent.

Mailed copy to Clyde C. Downing, attorney for respondent, 600 Federal Bldg., L. A. 12.

[Endorsed]: Filed May 14, 1948. [91]

[Title of District Court and Cause.]

NOTICE OF FILING BOND FOR COSTS
ON APPEAL

To the Respondent above named and to his Proctors,
James M. Carter, United States Attorney and
Clyde C. Downing, Assistant United States At-
torney:

You And Each of You Will Please Take Notice
that the bond for costs on appeal herein was ap-
proved by the Honorable Paul J. McCormick, and
was filed in the office of the Clerk of the above en-
titled Court, on May 14th, 1948, and said bond was
executed and given by the Fireman's Fund Indem-
nity Company, a corporation, authorized to execute
surety bonds pursuant to the laws of the State of
California, said bond being in the sum of Two Hun-
dred Fifty Dollars (\$250.00), and is by reference
thereto made a part of this Notice.

Dated: May 17th, 1948.

/s/ LASHER B. GALLAGHER,
Proctor for Libelants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 18, 1948. [92]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated that, in lieu of a copy thereof, the original record of proceedings as returned by the Deputy Commissioner and on file in the office of the Clerk of the above Court in the above matter, may be transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit for use in printing the Apostles on Appeal and may then be returned to the Clerk of the above Court.

Dated: May 28th, 1948.

/s/ LASHER B. GALLAGHER,

Proctor for Libelants.

JAMES M. CARTER,

United States Attorney.

RONALD WALKER and

CLYDE C. DOWNING,

Assistant United States Attys.

/s/ CLYDE C. DOWNING,

Proctors for Respondent. [94]

It Is So Ordered.

Dated: May 28, 1948.

/s/ PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed May 28, 1948. [95]

[Title of District Court and Cause.]

PRAECIPE FOR APOSTLES
ON APPEAL

To the Clerk of the above entitled Court:

I hereby request that the record on appeal in the above entitled cause include the following:

1. Libel.
2. Answer of Respondent.
3. Motion for Summary Judgment.
4. Findings of Fact and Conclusions of Law.
5. Judgment or Decree.
6. Objections to Proposed Findings of Fact and Conclusions of Law.
7. All Minute Orders entered by the above entitled Court in the above entitled cause.
8. Petition for Appeal. [96]
9. Assignments of Error.
10. Order Allowing Appeal.
11. Bond for Costs on Appeal.
12. Notice of Appeal and Affidavit of Service on Respondent.
13. Citation and acknowledgment of service of copy of Citation, Petition for Appeal, Order Allowing Appeal and Assignments of Error.
14. Notice of Filing Bond for Costs on Appeal and Affidavit of Service by Mail.
15. All oral proceedings.
16. All exhibits.
17. Entire record of proceedings upon which the respondent Deputy Commissioner made and

entered the compensation order involved herein as returned by said Deputy Commissioner and on file in the office of the Clerk of the above entitled Court.

18. Transcripts of all oral proceedings before the Respondent Deputy Commissioner, or any other deputy commissioner to whom the matter may have been transferred.
19. Transcript of all oral proceedings, arguments and motions presented to the above entitled Court.
20. Praecipe for Apostles on Appeal and Affidavit of Service by Mail.

Dated: May 17th, 1948.

/s/ LASHER B. GALLAGHER,
Proctor for Libelants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 18, 1948. [97]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 98, inclusive, contain the original Citation and full, true and correct copies of Libel for Injunction Pursuant to Title 33,

U.S.C.A. Sec. 921; Answer of Respondent Pillsbury filed Nov. 3, 1947; Respondent's Motion for Summary Judgment; Minute Order Entered December 1, 1947; Answer of Respondent Pillsbury filed Dec. 4, 1947; Minute Order Entered February 16, 1948; Minute Order Entered March 1, 1948; Objections to Proposed Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Judgment; Petition for Appeal; Assignments of Error; Bond for Costs on Appeal; Order Allowing Appeal; Notice of Appeal; Notice of Filing Bond for Costs on Appeal; Stipulation and Order re Original Record; and Praecipe for Apostles on Appeal which, together with copy of reporter's transcript of proceedings on February 16, 1948, and original respondent's Exhibit A consisting of the certified record from the Commissioner, 13th Compensation District, transmitted herewith, constitute the Apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$24.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 14th day of June, A.D. 1948.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

In the United States District Court, Southern
District of California, Central Division

No. 7284-M Civil

CALIFORNIA SHIP SERVICE COMPANY, a
corporation, and FIREMAN'S FUND IN-
SURANCE COMPANY, a corporation,
Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner, 13th Compensation District,
Respondent.

REPORTER'S
TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, February 16, 1948

Honorable Charles C. Cavanah,
Judge Presiding

Appearances:

For the Libelants: Lasher B. Gallagher, Esq.,
458 South Spring Street, Los Angeles, California.

For the Respondent: James M. Carter, United
States Attorney, by Clyde C. Downing, Assistant
United States Attorney, Los Angeles 12, Cali-
fornia. [1*]

(Other court matters.)

* Page numbering appearing at top of page of original Reporter's
Transcript of Record.

The Clerk: No. 7284-M, California Ship Service Company, and others v. Pillsbury.

Mr. Gallagher: Ready for libelant.

Mr. Downing: Ready for the government.

The Court: You may proceed.

Mr. Gallagher: If your Honor please, in this matter the libelant has set forth in the libel what we believe is a full and fair resume of all of the evidence and procedure before the Deputy Commissioner, and we have filed a brief in support of our position here. The brief is supposed to be responsive to a motion for summary judgment, which is in the nature of a demurrer to the libel.

I think if your Honor would examine that brief, all of our points are sufficiently set forth with clarity to enable your Honor to render a decision in the case on the merits.

If your Honor comes to the conclusion that conceding the truth of all of the facts alleged in the petition that the compensation order is not contrary to law, then of course your Honor would have to dismiss the libel and that would be the end of it so far as this court is concerned. However, I would like to call your Honor's particular attention to two propositions. [2]

No. 1, the Deputy Commissioner here transferred the compensation hearing or matter to a Deputy Commissioner down in one of the southern states, and it is the position of the libelant that Deputy Commissioner Pillsbury was without the slightest power to make findings or any award one way or the

other in this case, as under the provision of the Fifth Amendment to the Constitution, which of course is absolutely binding on all federal officers, judicial and quasi-judicial, the libelant here, as defendant or respondent in the compensation hearing, was entitled to procedural due process of law, and that that due process of law was denied the employer and its insurance carrier by Deputy Commissioner Pillsbury attempting to decide the credibility of witnesses and who lied and who didn't lie when he hadn't ever seen the witnesses and didn't hear them testify; and that the findings of fact upon which an award should be based would have to be made by the Deputy Commissioner who actually sees the witnesses.

Now, your Honor will notice in looking over the record that the principal witness for the applicant was a colored woman, and her own attorney would ask her, for instance, for the sake of example, "Are you sitting in that chair now testifying before Mr. So-and-so, the Commissioner?" And she would say, "Yes." Then three minutes later you would ask the witness the same question and she would say, "No." You [3] would ask her whether her deceased son sent her any money in June of 1945, and she would say, "No, ever since my daughter had a common law marriage with a colored boy out in California,"—evidently her definition of a common law marriage was sexual intercourse—"and had a baby as a result of that common law marriage, then my deceased son didn't send me any money at all, he took care of his sister and her baby because that

no-good nigger went off and left her as soon as she had the baby." Then fifteen minutes later she would be asked a question about whether her deceased son sent her any money after the baby was born, and she would say, "Yes, he sent me \$15 for the month of June and \$15 for the month of So-and-so, and \$15 for the month of So-and-so."

When your Honor reads that testimony, I don't think your Honor, looking at it in a fair manner, as your Honor will and always does in performing your functions as a judge, could say upon reading her testimony that there is any substantial evidence in her testimony which would support any finding that this deceased boy did send her anything, because she says yes one minute and no the next, and it is our contention whenever the single witness testifies, "I was in Oakland on January 5, 1945," and then on cross-examination says, "I was in Los Angeles on that day and I didn't travel between the two cities at all," that there is no [4] proof that the witness was anywhere. There is just a flat contradictory destructive proposition set forth in the record.

No. 1-A, and as a corollary to the first proposition, is this: under the statute as it appears to read plainly in a case of this kind if there is a liability for compensation it is restricted to a percentage of the wages earned by the deceased during the dependency of the mother, and the brothers and sisters. It seems to me, if your Honor please, that when the statute uses that language it must mean the wages earned by the deceased prior to his death,

because there couldn't be any dependency upon a dead man. Therefore under the statute the only award which could be made by a Deputy Commissioner, assuming that everything of a jurisdictional nature was established by competent evidence, would be to make an award of the specified percentage of the total wages earned by the deceased from the time the dependency started up to the time of the death, if the dependency existed during that entire period.

What the Commissioner did in this case was to make an award which is practically life insurance, or accident insurance, to the mother and his brothers and sisters, which will amount to the sum of \$7500 if it has to be paid out, and it was done on the theory that these people are going to be dependent from the date of death up to and including the time when \$7500 will have been paid, and I contend that it has [5] got to be a percentage only of the earnings of the deceased during the actual time of the dependency, and that period stopped as of death.

Point No. 2 is that the Deputy Commissioner here made an order transferring the case to the Commissioner down south, and that involves the question of jurisdiction.

I think perhaps I have jumbled my two points together in making the statement that I have, but I believe that that covers the matter so far as we are concerned in reference to the specific points that I desire to call to your Honor's attention orally. The

balance of the position of the libelants is set forth in the memorandum which is in the file, and I assume that it would be a useless waste of your Honor's time for me to stand here and repeat all of those things, because your Honor will read it, and reading it is better than hearing me attempt to expound it again.

Mr. Downing: If the court please, there is now before the court a motion for summary judgment, and there also has been filed an answer on behalf of Warren H. Pillsbury. If the court should deny the motion for summary judgment at this time, proceeding upon the trial of the merits of the case, we would like to offer in evidence on behalf of Warren H. Pillsbury the transcript which has heretofore been filed and is on file in this court now.

Mr. Gallagher: We have no objection to that being [6] received in evidence, if your Honor please.

Mr. Downing: We would like to have it marked in evidence at this time.

Mr. Gallagher: Mr. Downing, might I inquire at this time if there is included in that record the order which was made by the respondent transferring the matter to the Deputy Commissioner in New Orleans?

Mr. Downing: I haven't examined it. I assume there is, Mr. Gallagher.

Mr. Gallagher: I haven't found it. May we stipulate that we can obtain a certified copy of the order that was made by Mr. Pillsbury, and also a copy of any other order made by the official who

would have to make the order retransferring the matter back to Mr. Pillsbury, if there is such an order?

Mr. Downing: We have no objection to having come before the court all records pertaining to this case, either here or in New Orleans.

I have a letter from Mr. Pillsbury in which he states:

“After the customary development of the file the case was transferred to Deputy Commissioner Henderson in New Orleans for the purpose of holding a hearing at that city for convenience of witnesses. This was done and the file returned to me for decision.”

Whatever orders there are growing out of that we have [7] no objection to stipulating that they may be stipulated in evidence, if there are any in existence.

Mr. Gallagher: We would like to have the order itself, if your Honor please. Of course, Mr. Pillsbury's statement in his letter, while it no doubt reflects his opinion, is not anything that is binding on your Honor or on the libelants here. It is no part of the official record.

Mr. Downing: It wasn't given for that purpose. It was simply given for the purpose of showing the matter was transferred to New Orleans. It is for the purpose of showing if there is no order in the file but there is one in existence we have no objection to its being introduced in evidence.

Mr. Gallagher: May we have 10 days within

which to obtain certified copies of all orders of transfer and all orders of retransfer if there are any, to introduce in evidence?

The Court: That would delay the disposition of the case, wouldn't it?

Mr. Gallagher: We can probably get the ones from Mr. Pillsbury within two or three days.

Mr. Downing: Mr. Pillsbury is in town today.

Mr. Gallagher: We can arrange to get copies of those orders within 48 hours.

I am perfectly willing to submit the matter on the merits. [8]

I will withdraw my request, your Honor. It isn't going to do me much good.

The Court: Your motion is for summary judgment.

Mr. Downing: It is our motion for summary judgment.

The Court: Suppose the court grants that? That ends it.

Mr. Downing: Yes.

The Court: If the court denies it——

Mr. Downing: If the court denies it, then we stand on the merits of the case and ask that the file be introduced in evidence. Then we will submit the matter upon the authorities that we have heretofore submitted on the motion for summary judgment, and Mr. Gallagher has submitted his reply.

The Court: There is no testimony to be taken?

Mr. Downing: No testimony to be taken. We contend that the award by Pillsbury is supported

by substantial evidence, and that the court in examination of that transcript, if he finds that it is supported by substantial evidence, is bound by the decision of Mr. Pillsbury. He is the Commissioner.

The Court: He made the order?

Mr. Downing: He made the order, and we contend it is supported by substantial evidence.

Mr. Gallagher: I claim the man who heard the testimony is the only one who could make findings of fact with reference to the credibility of witnesses, and when someone sitting [9] out here in California attempts to decide the credibility of a witness, that that sort of procedure deprives the employer of his property without due process of law.

That is the point that has not been decided, so far as I know, by any court. It has never been raised.

Mr. Downing: We, of course, maintain that an examination of the record and the award of Warren H. Pillsbury will support that award by substantial evidence heard by Mr. Pillsbury.

The Court: He didn't see the witnesses or examine them; that is what he is contending.

Mr. Downing: Some of the witnesses were examined in New Orleans, for the convenience of witnesses, but the whole file was referred back to Mr. Pillsbury for final decision.

The Court: He made the final decision?

Mr. Downing: Yes, he made the award.

The Court: That is what they are attacking?

Mr. Downing: That's right. There is no trial *de novo* contended at this time.

Mr. Gallagher: There are jurisdictional facts in here. I don't know what his Honor is going to do about your motion. If the court grants your motion for summary judgment, then it doesn't make any difference here whether the libelants contend for a trial *de novo* or not. Your position is that under the summary judgment procedure if everything set forth in the [10] libel is true, then the court has nothing to do but to dismiss the libel.

Of course the court cannot dismiss the libel on summary judgment because we allege in the libel that there were errors, serious errors of law committed by Mr. Pillsbury, and whenever a Deputy Commissioner commits an error in law, if it is a substantial error then the whole award is contrary to law and must be suspended.

You can't just sit down and get letters from John Doe and Richard Roe, have no opportunity for cross-examination at all, and be deprived of your property without due process of law by Mr. Pillsbury or a United States District Judge or any other kind of a judge, and in that respect the record shows that Mr. Pillsbury took an arbitrary stand. He asked for certain wage statements, and the employer's representatives went around and got letters from various employers and sent them in and said in a letter to the Commissioner that the employer was willing to have the Commissioner use that information for the sole purpose of deter-

mining the earning capacity, the past earning record of this deceased.

A couple of these employers of this deceased Negro had said that the Negro said he had five dependents, in one case, and he had four in another. Mr. Pillsbury seized on that, because he didn't have any evidence of dependency, and he said he was going to receive those letters as evidence of [11] the fact of dependency.

Well, before the case was decided, before Mr. Pillsbury ever attempted to make any award, he was put on notice in writing that the defendant employer in that case challenged his authority to put those letters into the record as proof of dependency, because it deprived us of the right to cross-examine, and I don't think that any award which is predicated in substantial part upon incompetent documents can stand the scrutiny of a United States District Judge, because if your Honor approved of that kind of arbitrary and capricious conduct on the part of a Deputy Commissioner, then your Honor would say that any man can be deprived of his property without having the right to cross-examine the person who is making the statements. That alone, I respectfully submit, would make it very unusual for your Honor to even consider this motion for summary judgment seriously.

I know there are decisions coming out of the District Courts of Appeal of California holding, with reference to doctors' statements, for instance, an injured applicant brings in a letter from a doctor,

and he offers it in evidence in a compensation hearing, where the rules are just as lax as they can be, almost anything goes, nevertheless the District Court of Appeals said that in the face of an objection by the employer the letter of the doctor cannot be received in evidence unless the applicant produces the doctor [12] in an open hearing for the purpose of permitting the employer to cross-examine him.

You cannot cross-examine a piece of paper.

That is what Mr. Pillsbury did here, and the reason he did it your Honor, I think, will see clearly was because he knew that the testimony of this Negress in New Orleans was so flimsy that no court reading it would come to the conclusion that there was any substantial evidence upon which a finding of dependency could be made by any commissioner. So he got these letters which were sent to him for an entirely different purpose and he seized on those two lines and said to himself, "Here I got them, this says that the Negro told somebody that he had five dependents; the next one said he told somebody he had four dependents"—and he is going to take that as evidence. We objected to it and we claimed that that sort of arbitrary procedure prohibits any court from approving that kind of an award because it violates and contravenes the rights of the employers, the libelants here and its insurance company, contrary to the guarantees of the Fifth Amendment of the Constitution of the United States.

Mr. Downing: If the court please, all of the

points raised by Mr. Gallagher have been discussed in our memorandum in support of the motion for summary judgment, and we at this time are willing to have the matter submitted to the court. [13]

The Court: I will take this motion under advisement and examine the papers and briefs and see if I can reach a conclusion by 2:00 o'clock, and if I should overrule the motion for summary judgment will you be ready to go on?

Mr. Downing: As far as we are concerned, yes.

Mr. Gallagher: Yes, your Honor.

I have another case set before Judge Weinberger at 2:00 o'clock this afternoon, also. I will be there about an hour I think.

The Court: Suppose we take this under advisement and set it for 3:00 o'clock?

Mr. Gallagher: Very well.

Mr. Downing: Thank you.

(Whereupon, at 11:10 o'clock a.m. a recess was taken until 3:00 o'clock p.m. of the same day.) [14]

Los Angeles, California,

Monday, February 16, 1948. 3:00 P.M.

The Court: Gentlemen, in case No. 7284, in which you presented the motion for summary judgment to the court this morning, after considering the entire record I find here that there is a material issue of fact involved on this record which can't be settled by a summary judgment, because the respondent Pillsbury, Deputy Commissioner, in his

motion for summary judgment moves the court that judgment be entered remanding the case to him for making new findings relating to the deceased's average wage, and at the same time that his motion for summary judgment be entered. They are inconsistent. There is left open that issue of fact. He asks that it be remanded back. I will have to deny the motion for summary judgment. So you may proceed, if you wish, now, with the case on its merits.

Mr. Gallagher: We, if your Honor please, will submit the case on its merits to your Honor on the record which has been sent up here by the respondent Pillsbury, and ask that the transcript of the proceedings, which are certified to be the full, entire and complete proceedings before the various deputies commissioner, be received in evidence by your Honor, and that the case be submitted to your Honor for decision on the merits based upon the argument present this morning orally and the brief which the libelants submitted in response to the motion for summary judgment. And I would also ask leave to have time enough to order a transcript and have it written up of this morning's proceedings, so that your Honor may have clearly before you the objections and the nature of the objections which were called to your Honor's attention orally this morning. That shouldn't take very long, because we were only here about a half hour.

The Court: What do you say?

Mr. Downing. We are willing to submit it upon

the memorandum that the government has filed in support of its motion for summary judgment.

The Court: You have no further evidence?

Mr. Downing: We have no further evidence and no further argument.

The Court: You will submit it on the record before the court now?

Mr. Downing: We maintain that the findings of the Commissioner are supported by substantial evidence.

The Court: Counsel raised the question this morning about his rights under the Fifth Amendment of the Constitution, not having an opportunity to see and hear and examine these witnesses before the Commissioner.

It was set for hearing before the Commissioner and they had an opportunity to be there.

The Supreme Court has held in a number of cases, I find, [16] that the findings and report of the Commissioner in these cases, as to the facts, is in a sense conclusive. It is binding on the courts. That is how the court has interpreted that Act as to the character of the witnesses or the weight of the evidence, that they are findings made to the court; the court doesn't review that unless it is against principal law. That is what they have held again and again.

Mr. Gallagher: Your Honor is perfectly correct with reference to the law, but I respectfully call your Honor's attention to a mistake in fact, which I don't blame your Honor for having made. I didn't make any contention to the effect that the libelants

were denied any of their rights under the Fifth Amendment because of any failure of opportunity to cross-examine living witnesses. My point was this: The Deputy Commissioner arbitrarily and capriciously and without any warrant in the law took a piece of paper on which were certain alleged facts, to wit, a statement made by somebody working for a ship service company that this Negro, this deceased Negro, had five dependents; another letter that he had four dependents; and overruled our objection that those pieces of paper were not competent evidence.

We had plenty of opportunity to cross-examine witnesses who appeared and testified, but we didn't have any opportunity to cross-examine that piece of paper which the Deputy Commissioner used as a substantial basis for his finding of [17] dependency. That was the point with reference to the Fifth Amendment to the Constitution. We say the Commissioner had no lawful right whatever to accept those letters making those statements about dependency as proof of the fact. Yet he did it. When he did that he did something which makes the award contrary to law under the decisions. That is why I wanted to get that written up this morning, so your Honor would have exactly what our contention is.

The Court: That is before the court about these letters, that is in the record now?

Mr. Gallagher: Yes, your Honor.

The Court: It is just a question of what is the legal effect of those letters.

Mr. Gallagher: And whether they are competent evidence.

The Court: What is your analysis of this award? What was it under your idea? I have a notation of it, but I want to see if I have it right.

Mr. Gallagher: It is an award of the Commissioner providing for the payment of the maximum benefits which he could possibly have ordered to this mother and the children, until \$7500 have been paid.

The Court: That is the way I noted it.

Mr. Gallagher: That is the limit.

The Court: You are complaining that that is illegal because there is not sufficient evidence to show who of these [18] children were entitled to it?

Mr. Gallagher: Or that the mother was entitled to it. There is no evidence of dependency. And, also, it is illegal because the most that the Commissioner could have awarded, assuming that there was legal evidence of dependency, would be a percentage of the wages earned by the deceased during the period of dependency, which period would have to be up to the death and not after the death.

The Court: Do you agree with him?

Mr. Downing: No, I don't, if the court please. We still maintain that an examination of the transcript will produce substantial evidence to support the award, and that the question of dependency was substantially supported by evidence as reflected in the record of Pillsbury.

The Court: That he didn't have to depend on these letters?

Mr. Downing: I think the court will examine everything that appeared before the Commissioner, and in his examination if he finds that there is substantial evidence to support the award, even though some things were admitted or not admitted, I still think the court is bound to find in favor of the respondent.

The Court: The Supreme Court has held, I find, in a number of cases of this character that the findings of the Commissioner on the facts are the findings of this court; [19] you can't go back of them.

Mr. Gallagher: But if the Commissioner makes a mistake with reference to the introduction of evidence, then that nullifies the whole award. That has also been decided, and I have given the court those citations.

I don't think my friend on the other side really gets one of the points that I make. Where the statute says that an award may be made to a dependent mother, or a mother, or dependent brothers and sisters, of a certain percentage of the wages earned by the deceased during the period of dependency, it must mean that the period of dependency referred to is something which occurred before the man died, because he doesn't earn anything after he is dead.

The Court: You claim this award goes beyond that?

Mr. Gallagher: Yes, it does. And it is not an award based on a percentage of the wages earned by this man during the time that they claim that

these people were dependent. It ignores that as a basis altogether. I don't think the award could be more than \$500 if there is a legal basis for the award, because his earnings during the period that they claim dependency wouldn't exceed a couple of thousand dollars total. Yet this award gives over 10 times more than the man earned during the period of this dependency.

It is restricted to, I think, 25 per cent, or something like that, of the wages of the deceased during the dependency. [20]

The Court: The limit of the award is what, do you contend?

Mr. Gallagher: It is \$7500, that is what it will amount to. But I claim it couldn't exceed \$500 if they had every right in the world to collect it, because the statute says a certain percentage of the wages of the deceased during dependency; and he certainly couldn't earn any wages after he died, unless he is some supernatural being. That is why I wish your Honor would let us have this written up so your Honor could read it.

The Court: Yes.

Mr. Downing: If the court please, there is attached to the petition for injunction a copy of the compensation award, and the award as I read it says:

"That the employer, California Ship Service Company, and the insurance carrier, Fireman's Fund Insurance Company, shall pay to the claimants compensation as follows: To claim-

ants Louise Johnson, Sr., Lucille Ideal Johnson, Edwin Johnson, Hilda Mae Johnson, Harold Johnson, Walter Johnson, and Romales Johnson, payable to Louise Johnson, Sr., the sum of \$200 upon the burial expense, to be paid to W. D. Fisher & Son, Inc., funeral director, upon the liability of said claimants therefor.

“To claimant Louise Johnson, Sr., for the benefit of herself and said minor children, the sum of \$742.85 forthwith as of July 2nd, 1946, less, however, the sum of \$65 to be deducted therefrom and paid to claimants’ attorney J. L. Woodville upon his lien for attorney’s fees.

“To said claimant Louise Johnson, Sr., for the benefit of herself and said minor children the sum of \$25 a week payable in installments each two weeks beginning with July 3, 1946, until further order of the Deputy Commissioner.”

The Court: That is what he says will run up to about \$7,500?

Mr. Gallagher: \$7500, yes.

The Court: And he died on what date, do you claim?

I might suggest to counsel that you prepare a little statement of the construction that you put on this award and hand it to me, serve it on one another and let me get your view as to the period of this award and how much it is. You can do that.

Mr. Downing: I beg your pardon?

The Court: I say if you will prepare a little

statement as to what you contend when the award would run, between what certain dates, and how much you claim it would be, serve it on counsel and then he can make his reply. You can hand it to me within the next three days? [22]

Mr. Gallagher: Yes.

The Court: Then I will take the matter under advisement.

I cannot send this case back under this prayer of the petitioner for summary judgment. He asks me to send it back to finish up the job. I can't do that. I have to decide whether it will go to final judgment or dismiss it, that is the limit of the summary judgment.

Hand that to me as soon as you can. I have a lot of cases to try, and I will try to check that over. Put at the bottom what you are contending for and that statement. While I have gone through this record, I will go through it again and that way I can get your contention better than from this statement that you have filed here. Be more specific.

Mr. Downing: If the court please, I this morning asked that the transcript of the testimony before Mr. Pillsbury be offered in evidence as Respondent's Exhibit A. I think there was no objection?

Mr. Gallagher: That is right, no objection.

Mr. Downing: May it be marked?

The Court: Very well.

(The document referred to was marked Re-

spondent's Exhibit A, and was received in evidence.)

[Note—Already printed in these Apostles at pages 12 to 67, being the Transcript of Testimony at Hearing Before Deputy Commissioner Joseph H. Henderson at New Orleans, La.]

The Court: That completes the record?

Mr. Downing: Yes. [23]

The Court: I will wait for your statement and check it over. [24]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 19th day of February A.D., 1948.

/s/ SAMUEL GOLDSTEIN,

Official Reporter.

[Endorsed]: Filed Mar. 1, 1948.

[Endorsed]: No. 11957. United States Circuit Court of Appeals for the Ninth Circuit. California Ship Service Company and Fireman's Fund Insurance Company, Appellant, vs. Warren H. Pillsbury, Deputy Commission, 13th Compensation District, Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 15, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11957

CALIFORNIA SHIP SERVICE COMPANY, a
corporation, and FIREMAN'S FUND IN-
SURANCE COMPANY, a corporation,
Appellants,
vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner, 13th Compensation District,
Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY ON
APPEAL AND DESIGNATION OF PARTS
OF RECORD NECESSARY FOR THE
CONSIDERATION THEREOF

Appellants adopt as their points on appeal the
Assignments of Error appearing in the transcript
of the record in this case.

Appellants request that the record as certified to
the Clerk of the United States Circuit Court of
Appeals, for the Ninth Circuit, be printed in its
entirety.

Dated: June 18th, 1948.

/s/ LASHER B. GALLAGHER,
Proctor for Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed June 21, 1948.

